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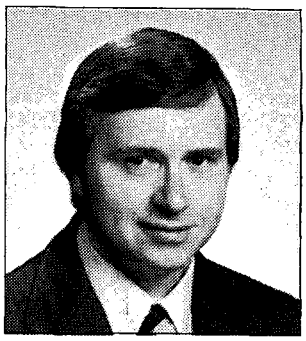
THE FASTEST GROWING CHURCH IN THE WORLD

by Brother Keith E. L'Hommedieu D.D.



It's quite safe to say that of all the organized religious sects on the current scene, one church in particular stands above all in its unique approach to religion. The Universal Life Church is the only organized church in the world with no traditional religious doctrine. In the words of Kirby J. Hensley, founder, "The ULC only believes in what is right, and that all people have the right to determine what beliefs are right for them, as long as they do not interfere with the rights of others."

Reverend Hensley is the leader of the worldwide Universal Life Church with a membership now exceeding 7 million ordained ministers of all religious beliefs. Reverend Hensley started the church in his garage by ordaining ministers for $1.00 by mail. During the 1960's, he traveled all across the country appearing at college rallies held in his honor where he would perform mass ordinations of thousands of people at a time. These new ministers were then exempt from being inducted into the armed forces during the undeclared Vietnam war.

In 1966 Reverend Hensley was fighting the establishment on another front. The I.R.S. tried to claim the ULC wasn't a legal church and proceeded to impound the ten thousand dollars in the church bank account. The feisty Hensley filed suit against the I.R.S. in federal district court for return of the funds and to permanently establish the ULC as a legal tax exempt entity. On March 1, 1974 Judge James F. Battin ruled against the I.R.S. in his decision which stated, "Neither this court or any branch of this government will consider the merits or fallacies of a religion. Nor will the court praise or condemn a religion. Were the court to do so, it would impinge upon the guarantees of the First Amendment." The judge then ordered the I.R.S. to return the impounded money and to grant the Universal Life Church its tax exempt status.

Reverend Hensley has stated that he believes a church is people and not just a fancy building. He also believes in total freedom and equality for all people. The ULC will ordain anyone without regard to religious beliefs, race, nationality, sex or age.

The ULC's success formula is both effective and unquestionably legal. After a person has become an ordained minister, he or she can join with two other people and form their own Universal Life Church. These three people then make up the board of directors consisting of a Pastor, a Secretary and a Treasurer. The ULC will then grant the group the use of its legal church charter complete with both federal and state tax exempt numbers. The newly formed church may then open a bank account in the church's name. Any member of the church can legally donate up to 50% of his or her outside income to the church and take a corresponding tax deduction. The church in turn can pay the complete housing cost of its minister including rent or mortgage payment, insurance, taxes, furnishings and repairs. The church can also provide the minister with full use of an automobile as well as pay for travel and educational expenses. None of these expenses are reported as income to the I.R.S. Recently a whole town in Hardenburg, New York became Universal Life ministers and turned their homes into religious retreats and monasteries thereby relieving themselves of property taxes, at least until the state tries to figure out what to do.

Churches enjoy certain other tax benefits over the common man on the street. For instance, a church can legally buy and sell real estate or stocks and bonds completely tax free. It can receive tax free income from bank deposits or mortgages. Many churches own large publishing, recording, or other related businesses like hospitals, clinics and schools without paying any income tax.

A church can sponsor any kind of fund raising event such as a concert, play or even bingo. Churches are also exempt from paying inheritance taxes. When the pastor of the church dies, the board of directors simply appoints a new pastor and the church goes on.

Reverend Hensley has stated that he personally doesn't believe in the tax exempt status of churches. However, if the government is going to give a free ride to Billy Graham and the Pope, then why not let everybody participate in these blessings. Furthermore, he backs up his words by offering to defend in court any of his churches against an attack by a government agency.

Since the church was founded in 1962, it has attracted members who are movie and TV personalities, businessmen, government officials, lawyers, and doctors as well as all types of regular working people. During the last 15 years the Universal Life Church has blossomed into a full blown grass roots populace movement. Reverend Hensley is ordaining ten thousand ministers a week and predicts that the church will have over 20,000,000 members by the 1980's. In addition, requests for interviews and TV appearances continue to pour in.

Anyone who is a member of the ULC will tell you that the ULC is destined to change the world. By unifying mankind into a brotherhood of freedom orientated individuals, each respecting the other's right to live life as they see fit, the Universal Life Church hopes to put an end to all wars. Reverend Hensley admits that this is a pretty monumental task to accomplish, but he also points out that he is already well on the way to reaching his goal. Reverend Hensley invites anyone wishing to become a ULC minister to send a $5.00 tax deductible donation for the cause, to the Universal Life Church Monastery, P.O. Box 669 ( ), Aptos, CA., 95003.

(Editor's Note:
Brother L'Hommedieu is Chairman of the Board of Trustees of the Sacerdotal Order of the Universal Life and serves on the Board of Directors of the International Universal Life Church, Inc.)

reason

A forum for analysis and commentary, with an emphasis on individual liberty.

November 1978/Vol. 10, No. 7

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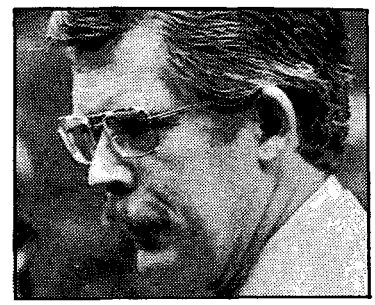

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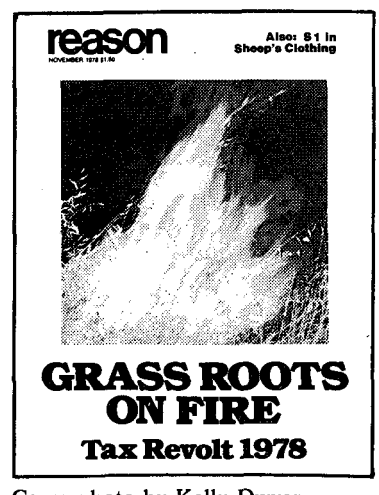

Cover photo by Kelly Dwyer

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editor's notes

• **PUBLICITY:** Articles from REASON continue to attract favorable attention. In August we were pleased to receive a letter from the International Communications Agency—the new body that combines the US Information Agency and the State Department's Bureau of Educational and Cultural Affairs. It turns out that their New Delhi office is conducting a series of seminar/lecture programs throughout India on urban planning. They asked permission to reprint and distribute Dick Bjornseth's article, "Houston Defies the Planners... And Thrives," from our February issue. The article will be given to seminar participants as background reading and also to local editors and publishers.

Thus, information about private, voluntary methods of resolving land use problems will circulate throughout India, possibly helping residents of that country to avoid the harm caused by coercive political zoning. Ideas, as Richard Weaver said, do have consequences.

Robert Poole's article on OTRAG ("African Deception," July) continues to receive coverage. The latest was a two-page write-up in the August issue of *L-5 News*, the magazine of the L-5 Society (1620 N. Park, Tucson, AZ 85719). That issue includes 12 detailed photos, never before published, of OTRAG's launch center and test rockets.

• **APOLOGY:** Our September issue carried an article by Prof. Kenneth W. Chilton, assistant director of the Center for the Study of American Business. The center does valuable work studying the effects of government regulation, and we have great respect for its people, including Chilton and director Murray Weidenbaum.

Consequently, we were dismayed to receive a letter from Professor Chilton after publication of the issue, in which he objected to our choice of the title "How the Feds Screw Small Business" for his article. Professor Chilton considers this "a shoddy title which reflects adversely on me, my employer, and on your publication." We wish to apologize for any embarrassment we may have caused either Professor Chilton or the center. He had titled the piece "The Impact of Federal Regulation on American Small Business," an accurate if not very colorful headline. Those wishing copies of the article with its original title may wish to contact the center at Washington University, Box 1208, St. Louis, MO 63130.

• **CONSULTANTS WANTED:** A friend of ours heads a consulting organization called the Atlantic Group, which is free-market-oriented with connections in many corporate boardrooms. One of its clients is looking for people for occasional consulting, of two types.

1. People with an interest in public policy who are likely to be professors or have an academic background or work as writers or commentators and (usually) have at least a master's degree. They must have a strong interest in public policy and be able to make contributions to knowledge of it or thinking about it.

2. The same sort of people, more likely to be academics, who have a special interest in the health and drug fields. These will create a subcategory of the larger group since the client is primarily engaged in this business. But people from the broader realm are definitely not excluded, since the client is just as concerned with problems of capital formation as national health insurance and drug legislation.

The client hopes to use this list for a number of purposes: to review articles, to conduct research, to discuss a speech topic, to engage in dialogue. The client is said to be one of the most far-thinking companies in the United States and wants to reach out to the academic community.

Those interested in being considered for this opportunity should send a resume to Atlantic Group, c/o REASON, Box 40105, Santa Barbara, CA 93103.

• **LAST CHANCE** The price of REASON has not increased in over two years. During this time, costs have continued to escalate; our postage bill alone is 50 percent higher than it was six months ago, and paper costs have just gone up another 15 percent. Consequently, we are increasing the price of a REASON subscription from $15 to $20 a year, as of December 1. To make this transition as painless as possible, we are making available (to present subscribers only) the following special offer. No matter when your subscription is due to expire, if you renew it *now*—for one, two, or three years—you need pay only the present low renewal rate. That's just $12 for one year, $21 for two, and $28 for three. Payment *must* accompany your order and it *must* be received before December 1. The way postage rates are climbing, three years for $28 has *got* to be one of the greatest bargains around.

—R. P.

A WARNING TO AMERICANS

Harry Schultz, international investment consultant, receives $1,250 per hour for his advice.

By Harry Schultz

I've always felt very strongly that no book should be written unless there is a genuine need for it. Douglas Casey's book, *The International Man*, is a book that fills a *true* need, in fact, a desperate need.

Furthermore, it does the job professionally. I've read so much garbage about "how things are abroad" by scores of U.S. or Canadian writers based on their vacations out of the U.S. or Canada, or a period of residence abroad that was short and limited in scope. As I'm known to be a "mold" for what an international man probably is, I'm naturally not taken in by amateurs. Thus, I trust my praise of this book will carry some weight for it deserves wide distribution. I've lived in every really important country in the world. I have offices and homes in many countries and I'm now as much at home in Copenhagen, London or Paris as in the U.S. cities where I grew up. I say this so you'll give credence to what I say about this book's quality, and also to emphasize the purpose of this book, i.e., to make a case to become an international man (or woman) yourself.

One grows up thinking one's country is the greatest, especially Americans. I think, in fact, it probably *was* the greatest for a certain period of history. But all countries have changed now to the point where they now consist of faceless bureaucracies, spouting varying degrees of socialism and zooming along the high road to Big Brotherdom. To make socialism work, it is necessary to make a kind of robot of all citizenry. The only hope of escaping this, in part or in full, is to be very international, maximizing your options and untying yourself from your concepts of red, white and blue patriotism. This is no longer just amusing cocktail chatter; it's life and death in terms of freedom—physically, financially and psychologically.

The coverage on passports in this book is especially intriguing. I predict you'll read it with your breath held, unable to lay the book down. These matters we had no need to think about 10 to 15 years ago. But now they have become survival essentials. The world has changed, scientifically for the better, but politically for the worse. We must change, too. If you're not good at changing to match the times, you had better read this book *three* times. The rest of you should read it *twice*.

By the way, it's no good saying, "Things are bad all over; I may just as well stay put and stick it out." That's a lazy excuse at best. Things are not *equally* bad all over, but even if they were, you gain by being flexible and not belonging to one country or being so irrevocably tied to one. Ideally, one should always be a "foreigner," wherever you are. That way, you have more freedom of movement and less tax exposure. One can be a foreigner in varying ways. Certainly your assets must be internationalized via citizenship, via an alternative home, and most importantly via know-how. Learn about foreign banks. Learn to be at home everywhere. Learn how to cope with any situation. Learn now, before so many barriers are built that you'll have no choices of action left.

Learn to think in terms of German marks and Swiss francs. Make foreign investments. You will build a wall around yourself if you are only able to think in terms of dollars and Wall Street. We have, in fact, two walls to knock down; the one we erect ourselves and the one governments have built. The latter is tough enough. The least you can do is be sure the first wall is flattened.

Another concept I urge you adopt: just because you were born in a given country doesn't mean you need to stay there, or that it's automatically the best, or the best for you. It is, in fact, a sin, in my view, to have lived most of your life in just one country. How provincial, how narrow, how you have cheated yourself of viewing the world with wide-angle lenses, with 3D vision. How can you profess to be a proper citizen of the world if you have not actually lived (no vacations please) in at least two other countries for a few years? You owe it to your mind to move about. And this is quite aside from the financial and political necessity to be international. I have long thought a requirement for a man to run for President of the United States should be that he has lived abroad for at least two years. How can he pass judgment on foreign policy if he has never left Chicago? If you feel that makes sense for a president, why not for you?

Some people are less mobile than others by virtue of special problems. But there is *no* justification to be completely provincial. Not if you want to survive. I urge you to take the advice of this book and become an international person. As Emerson said: Choose which laws you will (or can) live under. You're not stuck with any set of laws. The limitations are the windmills of your mind. Go forth. Grow forth. Good luck and welcome to the world.

(Reprinted from the Foreword)

* * * * *

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The Real Issue in Cutting Taxes

editorial

In the wake of the passage of Proposition 13 in California, the rhetoric about taxation has understandably been on the increase. Hardly a day passes without the media in the Golden State referring to the real or imagined consequences of its passage. Nationwide, the press has been covering the "aftershocks of the California people-quake," to use one reporter's phrase. Politicians and bureaucrats, after the fact, are generally eager to have themselves counted as properly concerned with what the voters want. Then there are the intellectuals.

Now the intellectuals are not in the habit of paying heed to taxpayers—especially when these taxpayers make it their business to pull much of the rug from under the intellectuals. And you can believe that the intellectuals are sensing the oncoming pain. After all, they draw large benefits from government spending. Various educational organizations, think tanks, and other grant recipients are certainly aware that what they are doing might not be regarded as essential government services.

But this is only part of the explanation for why the intellectuals are almost uniformly opposed to the temper expressed by the referendum in California. More important than their vested interest is their firm conviction that when taxpayers seek to retain some of what the government would like to steal from them, the motivation must be crass materialism.

The editors of *The New Republic,* for example, called the Prop. 13 attitude "Me First" and promptly condemned it through and through. How dare anyone think of himself or herself first? How dare one be so concerned with one's own well-being, one's own projects, one's own success in life?

That famous novelist and would-be economist John Kenneth Galbraith followed suit in an address to a convention of public employees. He too accused California's citizens of crass materialism, of lacking in compassion, of wishing the worst on the poor, the black, the crippled, and everyone else it is laudable to mention when one does not like others having even a modicum of their own way. The same theme was echoed by Vernon Jordan, of the National Urban League, and other black leaders—as well as the venerable George McGovern—all of whom deemed Prop. 13 racist.

And those who have advocated Prop. 13—what answers do they offer to this line of attack? None. Essentially, they have focused on government waste, on how much government could save—and still do those important things like making everyone safe from living in this universe or supplying everyone with the illusion that full employment (with a fine, satisfying job), world peace, the flourishing of the arts and sciences, 20 years of good education, etc., can be guaranteed by the various levels of government.

Waste, however, is categorically not the essential issue in tax limitation and tax elimination. The issue is precisely whether government *should* appropriate people's income and property for purposes of furthering other people's projects.

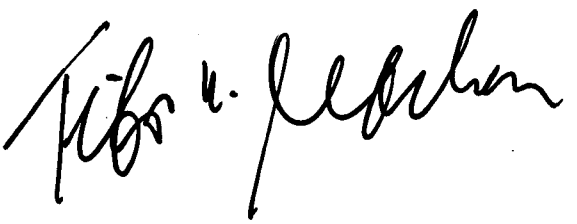
Measures to make government more efficient do have a valid place in the public policymaking. Government should not be immune from the requirements of efficiency, frugality, and other virtues. On the other hand, once government is given numerous tasks, isn't it crass and petty to worry about waste? What of the waste at Ford Motor Company—or REASON magazine or the local drug store? Such waste is part of doing business, even if the nonprofit character of government makes it possible for it to waste far more than a profit maker could tolerate.

Waste is not the essence of our current troubles. Those troubles have to do with government's stepping in where it should never dare to enter—in the private and social affairs of human beings everywhere.

But in a climate where the morality of self-sacrifice reigns, where Galbraith and *The New Republic* can lash out at people's self-interested conduct without any serious challenge, tax limitation is not sufficient for achieving essential progress in the direction of the free and decent society. Such progress cannot be made without confronting the underlying notion that you and I and every one of us exist to be slaves to the well-being, health, safe living, and full satisfaction of others.

It is, first of all, wrong to forcibly impose on people the practice of charity, even if charity were one of the prime virtues everyone should cultivate. Second, charity is not the prime human virtue—it's not even high on the list. There is everything honorable in pursuing goals suited to oneself, goals that will enhance one's own life and the lives of those one has come to love, cherish, respect, or otherwise value.

Until this idea is made clearer and clearer, until it is made as prominent as its diametrically opposite idea that everyone's business is to live for everyone else—until then, there will be very little change despite all the tax-limitation measures, restraints on spending, etc., etc., that people have cooked up in an effort to live something of a pleasant and prosperous life without challenging the view that it is wrong even to think of doing so.



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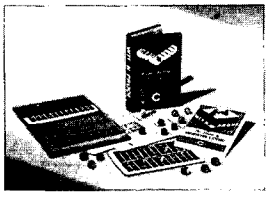

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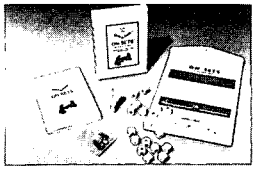

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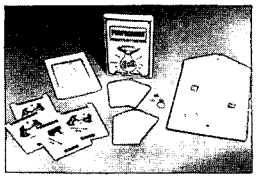

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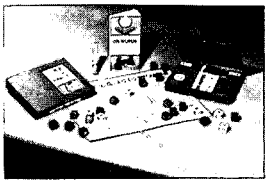

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letters

Attributing Atrocities

"Spiritual Horror" [August] was not only well written and informative, but also encouraging—the latter because it appeared in a magazine devoted to individual liberty. Many voices within the libertarian camp seem to fall into the "Andrew Young complex" which is to argue that Communist regimes are constitutionally incapable of committing worse atrocities than a non-communist regime. The extreme in this line of argument is that all atrocities committed by Communist regimes are, directly or indirectly, attributable to policies of the US government, possibly fashioned at the behest of US big business.

Some governments would kill everyone associated with REASON magazine, while others do not. Those who are guided primarily by self-interest should find a distinction of interest, no matter how many other policies they find objectionable.

Robert A. Schadler
Editor
The Intercollegiate Review

Minorities and the State

By printing the adapted version of Walter Williams's *Policy Review* article ["The New Jim Crow Laws," August] the editors of REASON have saved a lot of work for those of us who have been passing photocopies of the original article around. Thank you!

Williams's first-rate analysis of the effects of statist public policy on minorities does two things: it provides facts that underscore the position taken by Edith Efron in her last Viewpoint column that a libertarian triumph is not imminent; and it confirms my belief that the best friends minorities have today are the middle-class tax rebels.

Anne Wortham
Brighton, MA

Cultism

Edith Efron is right in calling attention to the phenomenon of libertarian cultism [Viewpoint, August]. She gives me the impression, though, of condemning cults without attempting to understand their psychological roots and emotional functions. This is unfortunate since cult phenomena are undercutting the effectiveness of libertarianism and promoting statism here and abroad.

Libertarian theory has completed only half its job; it has effectively proven its case about the nature of the State. It has not, however, shed any light on the development of the State, Oppenheimer's conquest theory notwithstanding. (Is there any evidence for it?)

I can only briefly sum up what I discuss more fully elsewhere (recently in *Individual Liberty*, and in the Sept. 1976 REASON) but the State exists for a reason. It serves a function in human society. That function is emotional and psychological, and so the State is closely related to myth, magic and religion. Merely to point out that libertarianism, too, is a cult, as Ms. Efron has done, solves nothing because we know very little about cults in general. Therefore when one presents itself in a libertarian setting, we are susceptible to it.

It is possible to believe the right thing for the wrong reason, and this is the problem the libertarian optimists, as Ms. Efron calls them, have. The remedy is to learn more about the irrational side of man's nature. Sigmund Freud, Carl Jung, Ernst Cassirer, Silvano Arieti, Claude Levi-Strauss and Heinz Kohut have all made their contribution. It is high time libertarians became acquainted with their work.

George Morrone
Harrisburg, PA

Quebec Libertarian

I nearly fell off my chair upon opening the July 78 issue. I can't believe it; there exists another French-Canadian who shares my views, Pierre Lemieux. In eight years, I had met only one! He said it all, exactly what I had come to conclude and I have nearly nothing to add but these are small details and not the purpose of this letter.

Do you really know what it is not to be able to exchange ideas, share, talk about and discuss them in French with your friends? What can you say when you are told that all the books you refer to are in English and that they do not want to learn or do not want or care to read in English? As Pierre Lemieux wrote so well, there is no libertarian tradition in Quebec. The moon is closer than liberty. So if you want to exchange and get the feel of your ideas, you go where they are, to the English minority in Quebec. Minority used both ways: the English are in minority in Quebec and the English libertarians even more! Libertarian ideas coming from the English will and do have problems considering the context and the present mood. It can get quite lonely for a French-speaking one. I know.

I sincerely hope Pierre Lemieux can reach more French-Canadians and I wish him well. How I wish I had known about him before leaving!

Jose-Renee Trudeau
Edmonton, Alberta

Case for Optimism

Edith Efron's libertarian "realism" [August] is no more supportable than the optimistic hype she attacks. She simply asserts its validity, in a manner reminiscent of those people who run around proclaiming the second coming of John Galt.

According to Ms. Efron's model of social change, a majority in the American colonies must have been pro-independence before the American revolution could have been won. There must have been a pro-communist consensus in 1917 Russia. There must have been a popular demand for free enterprise in order for the postwar German economic "miracle" to occur. But her analysis misses two insights. First, these societies were not "run" by majority rule—and neither is today's America. In each case, social change was accomplished by a small cadre—a cult, Efron would say—who knew where they were going. And indeed, today's America is being transformed into a totalitarian society by a cohesive elite whose vision operates far beyond the reach of any consensus.

Efron would reply that the majority hold principles and ideas which grant tacit permission to this elite. So they do. They also hold principles which grant tacit permission to libertarians. The truth is that the "majority's" beliefs are a contradictory mess, and they exert little effect upon the course of history. Efron's suggestion to the contrary is but a backhanded way of paying homage to one of the great tools of oppression—the myth of democracy.

Second, Efron has confused the logical priority of education with chronological priority. Often we find in the history of social change that people "go all the way" when they discover the logical implications of earlier actions. What started out as resistance to a stamp act in colonial America blossomed into a full-scale revo-

lution, and the process of education was implicit in the famous rally, "If this be treason, *make the most of it*!" Specific political progress can be made even without widespread adherence to libertarian beliefs, and these political gains can through their secondary effects put libertarianism on an exponential growth curve—for the logical implications of this political philosophy are unusually profound.

William D. Burt
Greenwich, CT

Purgation

Edith Efron [August] has wisely & appropriately chosen your publication for her crusade to purge the movement of hippies, supporters of Women's & Gay Lib, and those who believe that the right to take drugs is more important than the right to make an unlimited amount of money. I will do my part by purging myself, since I am All Of The Above, and thus I will not renew my subscription when it runs out. In case you are interested, the last straw was your all-male abortion panel.

Arthur D. Hlavaty
New Rochelle, NY

Ultimate Solution

While everybody is drunk with success on Proposition 13 and thinking of next putting the Federal income tax out of its misery, let's do better than that. Let's go whole hog and get rid of Federal taxes completely. There is even a way to do it without having to cut any programs.

Presently Washington takes its tons of flesh in three ways. (1) Through taxes, direct and hidden—especially hidden, like taxing industry instead of people. Or, since politicians always spend it faster than they dare to lay on taxpayers, even concealed in the price of goods, (2) through borrowing—which old well is running more and more dry, since it's harder and harder to find anybody with brains enough to have money who would lend it to the government. Which leaves them still in the hole, but there's still a way out, since they control the money, so they merely (3) make some more: inflation.

The answer is simple. (1) Eliminate taxes, a compulsory thing in the land of the free. (2) Let them borrow till they're blue in the face, if anybody will lend, because that's voluntary. (3) Then let them get the rest by out-and-out, no-bones-about-it, honest inflation.

For one thing, this would resolve all the high winds about what causes inflation, and make crystal clear who's doing it.

Of course if they did that, the rest of us

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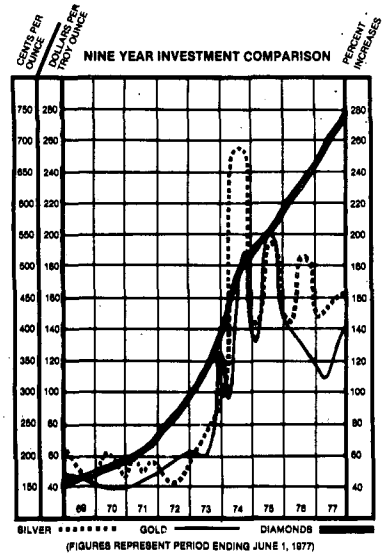

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would quit using money made of air and go to something solid, like gold certificates. But those who demand government money can have all they demand, and everybody will be happy.

Robert A. Leggett IV
Cheyenne, WY

Gold Clarifications

In reference to your June article, *The Promise and Perils of Gold Clauses*, I would like to clarify and comment on a statement attributed to me. It was in fact made by Senator Jesse Helms in the Congressional Record, January 10, 1977.

My bill, if approved, will make enforceable, gold clause contracts entered into after the enactment of the bill. It is intended to stand neutral with regard to the enforceability of gold clause obligations issued in the past. It has come to my attention that there is at least one case pending in the courts which could require gold clause bonds issued before the 1933 resolution, be paid in gold.

There were approximately $200 billion of gold clause obligations outstanding affected by the 1933 resolution. Today there remain only $1 billion outstanding, of which $700 million is in investment grade corporate bonds and $300 million is in government bonds. These bonds clearly require interest and principal be paid in "gold coin of the United States," which is defined by Statute at $20.67 per fine troy ounce. Obviously, if the court enforces the contract after a 45-year hiatus, there will be some windfall profits for a few speculators who will be heavily taxed by the IRS. But it will primarily return, to tens of thousands of long-term bond investors, the original capital value invested. Isn't this the purpose of a gold clause?

In closing, I find the remarks of a legislative assistant asserting what the judicial branch may or may not rule to be incongruous, and the statement referring to the least-expensive Gold Deposit Certificate is inaccurately reported. The Bank of Nova Scotia charges a sales commission of ¼ of one percent, which is considerably cheaper than the Deak certificate.

R. Alexander Ellison
Seattle, WA

False Analogy

I am appalled at the ignorance and illogicalness evidenced by Thomas S. Szasz in just a few sentences on page 10 of the July issue.

I agree with the point he is trying to make, but I must protest the manner in which he attempts to make it. Of course it is absurd that the law allows us to put some known harmful substances in our bodies and at the same time imposes outrageous penalties if we choose to use illegal drugs.

What I object to is the comparison between alcoholism and Judaism as well as the implication that alcoholism is a moral issue.

For your information, Mr. Szasz: (1) Alcoholism is a disease (it even has been known to strike priests and rabbis). (2) Judaism is a religion. (3) No one has ever gotten high on ham (Jewish or otherwise). (4) No one has ever committed a violent crime or been involved in an auto accident as the result of having eaten ham.

Next time, Mr. Szasz, please try to make more logical comparisons. It is of no value to simply be right. We must be convincingly so.

Bill Tarls
Highland Park, CA

Double Standard?

The horror in Cambodia [August] induces one to wonder where B'nai B'rith is these days. I heard so much after "Holocaust" from them and others that there should never be another like it, yet they ignore this one going right on under their noses. At least it is public enough to be readily seen.

Did they mean there should never be another holocaust just for Jews? If so, that seems rather primitive.

They should be shouting from the hilltops, and are silent. Thus they condone what they pretend to detest.

Thomas S. Booz
Plantation, FL

Plain Terrorism

Begging Dr. Friedman's pardon, but I do not believe for a moment that those who defend Israeli atrocities are "Jewish bigots" [Letters, September]. I merely suggested them as an obvious source of such defenders; if Dr. Friedman wishes to try on the shoe and loudly announce that it fits, that is his problem.

I'm afraid that I cannot be impressed by Dr. Friedman's tortured "distinction." Shooting innocent bystanders is plainly the initiation of force,... and one needs no exotic moral standard to condemn Israel's conduct in Lebanon. If a policeman gets into a shootout in a crowded shopping center and kills an innocent bystander he is going to be in big trouble, even today. If he sprays the crowd with machine-gun fire to get his assailant he'll be convicted of murder—and I daresay even Dr. Friedman would approve. What, then, are we to make of the Israeli practice of cluster-bombing refugee camps, which they did at Rashidiye and elsewhere? Even the *Jerusalem Post*'s Hirsch Goodman was appalled: "The Israeli army," he charged, "once renowned for its Davidian finesse, was used as a huge stamping Goliath, hitting with all its might at places from which the terrorists had already fled." Up to 2,000 Arab civilians were

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slaughtered by such tactics. Israel admits to killing some 300 civilians; even that absurdly low figure is still more than all the Israelis *ever* killed by the PLO—by Israel's own figures! If that isn't "terrorism," sir, what is?...

Bill Birmingham
Colorado Springs, CO

Feminist Knowledge

Your reply to the libertarian feminist letter [July, p. 8] shows you have confused equal treatment on account of sex, with special knowledge due to being the person on the firing line.

Women are better qualified to speak on issues of rape and abortion because they have a first-hand knowledge, and can therefore bring a unique viewpoint to the debate.

Earlier debates on the subject, back in the '60s, in which Catholic bishops and male medical doctors and legislators were the only ones speaking, in which it was a scandal when a woman, who was affected at first-hand by this, got onto the floor and demanded the right to speak, produced a lot of hot air and dithering that was probably very intellectually refined, but which totally missed the point. Only when women started speaking openly of their experiences and recommendations did the debates become relevant.

Quite frankly, I would not consider a panel of whites to be qualified to speak with any relevance or depth on the ill-effects of apartheid, except as interested observers. With the best will in the world, they simply do not know where the shoe pinches, having never worn it. Likewise I agree with the feminists; men simply do not know where this particular shoe pinches.

Pat Mathews
Albuquerque, NM

Kudos!

Congratulations on your superb debunking ["African Deception," July] of Tad Szulc's great West German missile conspiracy theory, and on a generally very attractive and interesting issue.

Keep up the good work.

Steven K. Beckner
Washington, DC

Talking about Monopoly...

I consider the discussion between Paul Craig Roberts and Bill Birmingham [*Letters, July*] extraneous to the main point, which is: What policy is in the best interest of food production in the Imperial Valley? My test, in answering this question, would be the long-run interest of the consumer rather than the social justice of "land monopoly."

As a former Kern County farmer and Brawley teacher, I consider "government water" a *fait accompli*, unworthy of further quibble—like the federal gifts of lands to the railroads. However questionable the principle, it is done. As for any future such projects, I submit that the real danger of social injustice lies elsewhere. Government, itself, is the land monopolist beyond compare.

To dispossess the large operators of our inland valleys of their "excess land" amounts to the same thing as divesting General Motors of, say, Chevrolet and Pontiac. Perhaps there are those who would like to see the latter occurrence, but it doesn't make much sense and isn't likely to happen soon. And large-scale farming has made America the breadbasket of the world. The 160, or even a 640, acre limitation makes no sense any more. There *is* some top limit to economy of scale; but, the way technology changes, it is best to leave that to the market. To make it personal: we were glad to sell our 120 acres to a large operator when neither we, nor lessees, could make a go of it....

Charles R. La Dow
San Diego, CA

Another Side of Life

I am glad to see an article on insurance ["Are you Wasting Money on Life Insurance?" June], though I'm surprised that, considering the attack on "Buy Term, Invest The Difference (BTID)," you did not present the other side; there are merits to both whole life and term insurance programs that should be presented....

There is only one kind of insurance, and that is term, with increasing "natural" premiums. All other forms of insurance are contrived from the original pooling concept as described by Mr. Sutton at the beginning of the article. Level term, decreasing term, and all the other kinds of term insurance sold, have premiums actuarily adjusted to compensate for the special features.

Cash value insurance is a BTID scheme, too, because it promises to pay you during the term (insurance) and when you reach the end of the term (investment). These are normally called Endowment Policies (ordinary or whole life insurance endows at age 100). Mr. Sutton's Figure 3 demonstrates this concept.

I have found, like Mr. Sutton, that participating (dividend paying) policies have a better chance of equalling or bettering the cost of term policies over the long run (20+ years), but I am disappointed with his use of two outmoded concepts in an (*Continued on p. 48.*)

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brickbats

☐ **"Friends at the White House,"** says Richard Rovere in *Esquire* (August 29, 1978), "tell me Carter thinks he's going to be reelected in 1980." Why? "The ineffectual clod you know is preferable to the clod you don't," which is why "a 1980 Ford candidacy is greatly feared by Carter's strategists."

☐ **Racial and sexual discrimination**—at the Department of Health, Education and Welfare? Yes, indeed; one George J. Borjas, of the University of Chicago's Center for the Economy and the State, found that (for example) the average black female working for HEW gets only 58 percent of the average white male's salary. Borjas estimates that 39.8 percent of this differential can't be explained by educational and other "objective" factors. He asks, "Is the next logical step to stop HEW's receipt of federal funds until HEW's discriminatory practices are remedied?"

☐ **Everything Not Forbidden is Compulsory Dept.:** Rhodesia's new biracial government has outlawed racial discrimination by hotels, restaurants, and other "public places." "The new law does not affect [state-owned] hospitals, state schools, or segregated [by law] urban housing areas," says AP.

☐ **Gynecocracy marches on:** 81-year-old Roy C. Washington told Chicago police that his daughter and her boyfriend beat him, robbed him of some $2,300, and chained him to a bathroom radiator for a week. But he refused to press charges, saying, "With women you have to overlook some things."

☐ **Six months ago yr hmbl srvnt** revealed how the CIA lied in blaming *CounterSpy* for the assassination of Richard Welch, its station chief in Athens, citing the Congressional testimony of Morton Halperin in late 1977. According to veteran journalist Daniel Schorr's book, *Clearing the Air*, the Senate Intelligence Committee first revealed this in April 1976 (despite "strenuous efforts by CIA Director George Bush" to suppress it). Indeed, "The chief of the CIA's 'cover staff' [had] testified that by the time a CIA officer becomes chief of station 'there is not a great deal of cover left.'" So it is all the more droll that in August 1978 a certain organization should claim that "Richard Welch... was murdered in Athens in December 1975, after his identity was publicized in a rag called *CounterSpy*." The organization? Reed Irvine's..."Accuracy in Media."

☐ **Solomon Come to Judgement:** When 13-year-old Greg Dunn died of cystic fibrosis, his divorced parents went to court to decide who had the right to bury him. Judge George Cook ordered the child cremated and his ashes divided between them but rescinded his ruling when the boy's father agreed to let him be buried in Virginia.

☐ **Win some, lose some.** The US International Trade Commission has voted to protect American consumers from Red Chinese clothespins, which are supposedly "disrupting" the domestic clothespin industry. Meanwhile, Congress is contemplating proposals to lower other trade barriers, including one to abolish the duty on red peppers.

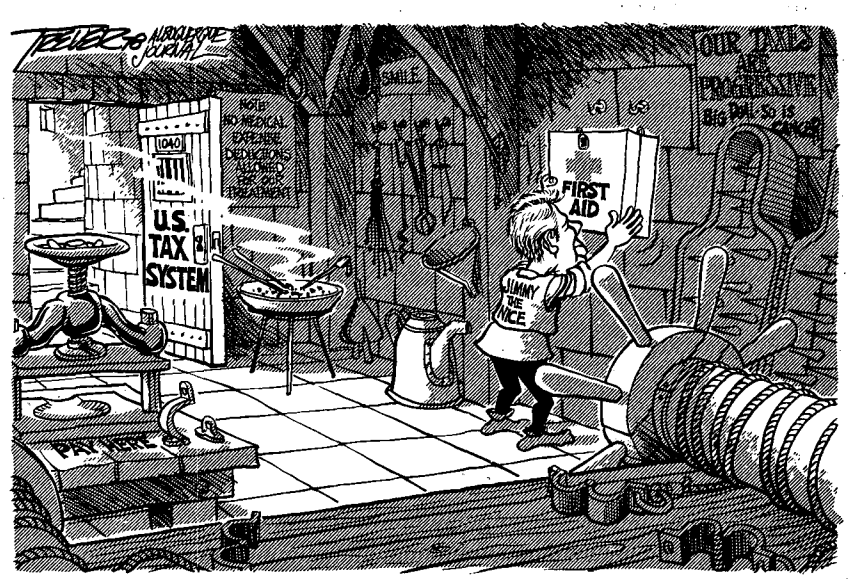
☐ **The shortest explanation** of the Katangan affair ever written, courtesy of Lewis P. Lapham: "President Carter blames Fidel Castro for allowing the Lunda tribesmen to invade Katanga. Mr. Carter either doesn't know or chooses to forget that nobody, not even James Reston or Andrew Young, can reason with a savage. When the Lunda get drunk they like to kill people" (*Harper's*, August 1978). The Lunda were drunk on Cuban rum, no doubt. Perhaps Lapham was inspired by Ayn Rand's explanation of the Middle East conflict, which continues only because the Arabs are "savages" who "just do not want to use their minds" (see "Rand on the Middle East," *Libertarian Forum*, December 1973).

☐ **North American Bait Farms,** of Ontario, California, received 4,700 entries in its recent earthworm recipe contest. The winner: *Pizza aux ver de terre*—Pizza with earthworms—which makes "the best pizza I've ever tasted in Los Angeles," according to one Angeleno.

☐ **Daniel Yergin,** writing in *The New Republic* (August 5-12, 1978), sheds new light on the etiology of the British Disease (also called the *Pox Brittanica*): "I sat in on a discussion," says Yergin, "among influential, committed individuals on the left side of the Labor Party. They were debating micro-processors. Was Britain to have its own micro-processor industry or not? If it did, then its very existence would involve the possible creation of new British millionaires. They didn't want any new British millionaires.... There was no question in the minds represented; better to prevent the rise of new British millionaires and let the industry remain in America."

☐ **Great Moments in Political Philosophy,** No. 8: On August 13, 1978, House Minority Leader John Rhodes tells *Face the Nation*, "President Nixon was very capable at foreign policy, there's no doubt about that." Or so the Associated Press quoted him. Perhaps he meant that the Mad Bomber was "very culpable."

—Bill Birmingham



trends

R&D and Growth

For many years—in fact, ever since World War II—we've been told that the taxpayers should finance research and development because the result will be economic growth and prosperity. But in the past decade indicators of such growth—US productivity increases, the proportion of US patents held by US citizens, and the number of new venture capital companies—have all turned sharply downward, even as R&D funding has increased.

So what are the science bureaucrats saying now? Russell Peterson, director of the Office of Technology Assessment, says that drawing a connection between research and economic growth could be dangerous, because it might fail to turn up solid evidence. Hence, he and other speakers at a colloquium sponsored by the American Association for the Advancement of Science urged that this "well-worn assumption of economic gain" be discarded as a "shibboleth." In the future, apparently, higher federal R&D budgets are to be argued for because the scientists are nice guys.

Postal Competition—A Mixed Bag

Three would-be competitors to the US Postal Service have been forced to suspend operations. All three attempted to deliver first-class mail in defiance of the government's statutory monopoly.

In Los Angeles the business manager of the South Bay Union High School District was only trying to save time and money for his employer. That's why Hugh D. Cameron used a commercial courier service to deliver paychecks, memos, and other paperwork among the various schools and offices of the district. For seven years Cameron's plan saved thousands of dollars and ensured prompt delivery—but in August postal officials clamped down. Cameron could, of course, continue to use the courier service, they ruled—if he put a 15 cent stamp on each piece and paid someone to cancel them. Needless to say, the district decided to just use the mails.

In Charleston, South Carolina the criminal was a 14-year-old boy. Kenny Maguire believed all the American rhetoric about entrepreneurship. So he went into business for himself, delivering letters on his five-speed bicycle. Above Broad Street he charged 8 cents each, below it only 5 cents. He had just landed his biggest contract—to deliver 80 wedding invitations—when the heavy hand of the State clamped down, putting him out of business.

Early in August the doors also closed at P. H. Brennan Hand Delivery in Rochester, New York (see "Monopoly Breaker," REASON, December 1977). A unanimous US Court of Appeals ruled that the Brennans had "utterly failed to establish the unconstitutionality" of the private express statutes that grant the government's monopoly. The firm's customers were incensed, as were the Brennans. The company had begun to turn a good profit.

Meanwhile, in the magazine field, where there is no government monopoly, "alternate delivery" companies continue their rapid growth. The largest company, Southern California's Inland Carriers, Inc., delivers over 340,000 magazines each month. *Better Homes & Gardens* plans to expand its alternate delivery

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cities from 6 to 16 this year, delivering 500,000 copies each month by mid-1979. A *Reader's Digest* vice-president has announced that the company is "committed to alternate delivery on a permanent basis." Also entering the market are major book and record clubs, though still on an experimental basis.

The combination of soaring rates, poor service, and postal strikes is leading publishers to desert the postal service in favor of competitors. Consumers of first-class mail service would probably do the same—if Congress allowed them the choice.

Deregulation Spurs Boom

Under the leadership of economist Alfred Kahn, chairman of the Civil Aeronautics Board, the CAB has substantially reduced government regulation of the airlines. The result has been fare reductions, new service, and an unprecedented boom in air travel. Domestic traffic in June was up 20 percent over the previous year, and the average load factor increased from 57 percent to 67 percent of available seats sold. Freddie Laker's transatlantic Skytrain is averaging a 96 percent load factor—and reached its first-year goal of 212,000 passengers five weeks early.

But Kahn & Co. aren't resting on their laurels. All summer long they continued to act, rolling back regulations and proposing still more changes to increase competition. For example:

- The CAB has indicated it will proceed, as planned, to allow all airlines that wish to begin service at Oakland, California, and Chicago's Midway Airport to do so. The Justice Department's Antitrust Division had earlier criticized the CAB for not instituting such "open entry" everywhere, right away.
- In August the CAB issued a final ruling to lift nearly all restrictions on charter flights. Gone are advance-purchase, minimum-stay, and minimum group-size requirements, and discount pricing rules are liberalized. And as of January 1, all but two of the myriad charter categories will be eliminated.
- Starting in October, airlines may cut fares by up to 50 percent on all flights and 70 percent during off-peak hours, without CAB approval. And they may raise fares by between 5 and 10 percent without approval.
- The CAB has also proposed a major revision in international airline policy. Its draft US-German "open-skies" agreement, presented to the Germans September 12, would permit airlines from each country to serve any and all cities in the other country, rather than only those few designated by the respective governments. (At present, for example, Lufthansa is allowed access to only five US cities.)
- In the air freight industry—already deregulated as to entry and pricing—the CAB has now proposed to abolish the remaining system of requiring carriers to submit freight rates ("tariffs") in advance for industry comment and Board approval or disapproval. Instead, carriers would simply report new fares the day they were introduced.
- The CAB has also decided to encourage competition between regulated ("certificated") airlines and unregulated commuter lines. As a first step it has allowed certificated Air New England to begin operating unregulated commuter service.

Kahn seems to know exactly what he's doing. Evidently, he's firmly convinced that the free market can do the job better than a bureaucracy. "We are not equipped to run a single airline, let alone a nationwide air transportation system," he told the American Bar Association in a hard-hitting speech recently. And he told the *Wall Street Journal*, matter-of-factly, "I don't see any need for the CAB—quite apart from the fact that I have tenure at Cornell and don't need a job."

Privatized Air Base

The only things the government can do competently are wage war and inflate the currency, right? Yet even this ancient bit of wisdom is open to question. Military operations tend to be as bureaucratic and wasteful as those of other government agencies. Hence, the significance of an ongoing Air Force experiment.

At Vance Air Force Base in Oklahoma, all personnel except the jet pilots are civilians. But they are not government employees. Instead, they all—guards, mechanics, bus drivers, KP staff, etc.—work for Northrop Corporation, one of America's largest defense contractors. Everywhere on the base blue signs carry the legend, "Operated by Northrop."

What difference does that make? Well, as might be expected, the private firm figures out how to do the same jobs at less cost. The Rand Corporation compared Vance with Reese Air Force Base—which is comparable in its mission, facilities, number of pilots trained, and number and kinds of aircraft. Vance AFB used only 74 percent of the personnel needed at Reese. And the Commission on Government Procurement found that, compared with seven other bases, Vance's costs were 20 to 30 percent less. "It has been an extremely successful program," said base commander Col. Thomas J. Magner, "and from an economic standpoint, the cheapest and most efficient way to go."

Whether the concept of contracting out military support services will be expanded is not yet clear. At present Vance is the only US air base operated in this manner. But the Defense Manpower Commission likes the idea and sees in it a key to cutting the burgeoning costs of military manpower. Despite a drop of 400,000 employees in the past decade, the Defense Department is spending *$22 billion* more for personnel. Saving 20 to 30 percent of that would be nothing to sneeze at.

European Freedom

Economic freedom continues to increase in Europe, especially in France and Germany. In the wake of the Left's defeat in this spring's elections, French Premier Raymond Barre is abolishing price controls. Barre, a former economics professor and advocate of the free market, set in motion June 1st the dismantling of the 30,000 government price decrees that have been issued since World War II. First to be decontrolled were trucks, railroad cars, machine tools, ball bearings, watches, tires, synthetic rubber, canned goods, and other food products. All remaining controls will be ended by October.

Over the past three decades France's price controls have served to limit or eliminate competition, in effect cartelizing industries. Since the government usually allowed cost-based price increases, companies had little incentive to keep costs under control. The result appears to have been higher prices than if no controls had existed at all. And Barre has made much of the fact that prices have been more stable in countries without controls—such as Germany and Switzerland.

Indeed, West Germany continues as a leader of free-market policies. In the last few years the ruling Social Democrats have flirted with neo-Keynesian policies and found them wanting. "In West Germany, all three parties no longer believe in Keynesian policies—in deficit spending," economist Wolfram Engels told *Business Week* recently. Instead of deficits, the Social Democrats now favor tax cuts and other incentives for investment as means of attacking unemployment.

Policies of this sort are being advocated for all of Europe by the Shadow European Economic Policy Committee—an international group of economists cochaired by Prof. Allan H. Meltzer of Carnegie-Mellon University. The group's recommendation for ending stagflation: "Monetary targets should be stated, met, and gradually lowered; competition increased; and taxes, particularly on employment, should be lowered." To increase competi-

tion the group favors deregulating energy and agricultural prices and ending subsidies to failing industries. To inspire business confidence, governments should remove price and wage controls, reduce money growth, and reduce the growth of the public sector.

Such policies are even being advocated in Italy. And sometimes from the most unlikely quarters. Luciano Barca is the top economist of the Communist Party, and a member of the Chamber of Deputies. According to Barca one of Italy's top priorities must be to "reduce the deficit of the public sector." Now *that* is progress in economic enlightenment!

More Competition in the Professions

Barriers to free-market conditions in the various professions continue to fall—by a variety of means. In the past few months the removers have included the courts, federal agencies, and professional organizations themselves.

In April the US Supreme Court ruled 8-0 that the ban on competitive bidding for engineering services is unconstitutional. The ban has long been part of the code of ethics of the National Society of Professional Engineers and is sanctioned by various state licensing laws. A similar ban on competitive bidding, this one on accountants seeking contracts to perform audits, was challenged in court by the US Justice Department. In a landmark ruling in federal court in Austin, the Texas Board of Public Accountancy's no-bidding policy was ruled in violation of federal antitrust laws. The Justice Department subsequently warned state and local governments that "antitrust has come to Main Street"—i.e., that anticompetitive laws and regulations are now fair game for attack.

Shortly thereafter, the Federal Trade Commission issued its long-awaited nationwide ban on state regulations preventing price advertising of eyeglasses. Until then, 40 states had still banned such ads. But the American Optometric Association immediately filed suit in federal court to block implementation of the FTC action. Showing far more enlightenment, the national convention of the American Institute of Architects decided to adopt an advertising policy similar to that recently approved for attorneys by the American Bar Association. That policy forbids "hucksterism" but permits advertising office hours, specialties, hourly rates, and fees for specific services.

The changes in these professions should result in a healthy expansion of competition—which generally results in a wider array of services and lower average prices.

Fighting Back

Two prominent persons have recently spoken out, urging business leaders to fight back against government regulation instead of simply sitting back and taking it.

Augustine R. Marusi, chairman of Borden Inc., has announced that company policy henceforth will be to defy regulatory bureaucrats when, in Borden's opinion, the company has a better technological solution to a safety or pollution problem than the one the bureaucrats demand. Borden will implement its own solution and force the agency to back down or sue.

The policy decision resulted from an incident in which Borden was forced to spend $250,000 on a treatment plant, when the firm's own engineers had come up with a recycling plan that, for far less money, would have achieved the same reduction in pollutant output.

Conceding that most businesses can't

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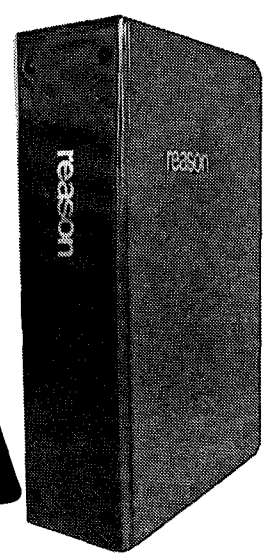

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afford the specialists and legal staff to defy the bureaucracy, Marusi said the burden of challenging "stupid" rules and orders must fall on the larger companies. Bureaucratic rigidity, he told a meeting of the Institute of Management Sciences, has become "the biggest anticompetitive force in America."

Former Council of Economic Advisors chairman Herbert Stein made a similar plea in the pages of the *Wall Street Journal*. Criticizing corporate leaders who go along with government dictation of "voluntary" wage and price restraints and think they are defending themselves by endowing chairs of free enterprise at universities, Stein called for businessmen to dissent—and loudly. "This means not only not cooperating [with government directives]; it means getting together to affirm that they will not cooperate, on grounds of principle."

Stein went on to point out that such action would not violate the antitrust laws or any other laws. Although the government can require reports and subpoena witnesses, "It cannot require anyone to come to lunch at the White House, to negotiate with a government official, or to conform to his standards of price behavior."

Perhaps if business leaders took such action, they would find themselves treated in an unaccustomed manner, both in Washington and in the public mind: with respect.

Subsidizing Inefficiency

What do taxpayers get for the $290 million they are forced to spend each year subsidizing 10 US shipping lines? Besides higher freight rates and tax bills, they end up with inefficient, unproductive shipping. So concludes an administration task force. Comparing the three nonsubsidized firms — SeaLand Service, U.S. Lines, and Central/Gulf Lines—with the 10 subsidized ones, they found that the former are more efficient, more flexible, and substantially more profitable.

The subsidy program began in 1937 to help US-flag ships compete with lower-cost foreign ones. But companies choosing to accept the subsidies must also accept government rules regarding service. Among other things, these rules require them to serve marginal routes considered by the government to be essential to US foreign trade.

But that's not the only reason for their poor performance. The cushion of subsidies encourages sloppy management and lack of cost controls. "The huge subsidy payments camouflage inefficiencies," says U.S. Lines president Edward J. Heine, Jr. "Companies become so preoccupied with putting together figures for the Maritime Administration to keep subsidy levels as high as possible that they reach a point where they really don't have a handle on their actual expenses."

The presidential task force is due to recommend reductions in the subsidies by early November. No one expects them to recommend abolition of the program—despite the fact that a shipping-industry trade group just got caught with its hand in the cookie jar. The National Maritime Council, a trade group promoting higher subsidies, has itself been subsidized by the Commerce Department for several years, it was revealed. Federal employees (of Commerce's Maritime Administration) were doing the council's membership billing and correspondence, and a federal employee was serving as its executive director. When congressional staffers uncovered this cozy setup, Commerce Secretary Juanita Kreps severed the relationship "because questions had been raised."

Milestones

• *Two Chinas.* It looks as if Taiwan and mainland China may learn to coexist after all. When Libya and China established diplomatic relations in August, conspicuously absent was any change in Libyan relations with Taiwan. In the past, both Chinese governments have insisted on being recognized as the sole government of all of China—meaning that both insisted that any government establishing full diplomatic relations with the mainland government break with Taiwan's. Apparently that policy is being consigned to the proverbial dustbin of history.

• *Whom Do You Trust?* Not the agents of the State. At least that's how indigent defendants look at it. A three-city survey conducted for the Justice Department found that 49 percent believed that their government-funded public defenders were "on the side of the State." But only 6 percent felt that way about private lawyers.

• *Firearms Freedom for All.* Contending that gun controls violate the civil rights of everyone, including those who live in violence-prone slums, the Second Amendment Foundation hosted a strategy conference in St. Louis uniting liberals and conservatives. Among those attending were representatives of the American Civil Liberties Union and veterans of the Southern civil rights movement. One of the points stressed was that enforcement of gun registration or confiscation laws would necessarily involve massive violations of civil liberties. The same point was made in the September issue of *Harper's* by REASON contributor Don B. Kates.

• *Black Consciousness.* "It's time to get off the money supply roller coaster that we have been on since the late 1960s," said congressional Black Caucus leader Parren J. Mitchell in a speech at the University of Wisconsin in August. "The principal fuel on which inflation feeds is money.... Once we recognize that rapid money growth can unleash inflation but cannot solve our unemployment problem, we can break through the psychological barrier which has prevented us from developing a full employment, noninflationary...strategy that works." Mitchell thus joins the NAACP in coming around to distinctly free-market views.

• *Still Innocent.* NBC's TV movie *Born Innocent* may have depicted a teenage rape. But merely depicting such an action in news or drama does not constitute incitement to commit such actions. Thus, ruled Judge Robert Dossee, NBC's actions in airing the show were protected by the First Amendment. Defense lawyer Floyd Abrams termed the decision "a marvelous vindication of First Amendment principles." The plaintiffs had sought $11 million, alleging that the movie had incited the rapists of a nine-year-old girl four days after *Born Innocent* was aired.

• *Making Criminals Pay.* A nonprofit public-interest law firm has begun a project to assist victims of violent crime in suing their attackers for damages. The Washington Legal Foundation, based in the nation's capital, hopes to instigate "a wave of litigation," making such suits "as popular as suing for medical malpractice or for auto accidents." According to WLF general counsel Daniel Popeo, "The big fallacy in public thinking...is that violent criminals are judgment-proof, that they are too poor to collect damages from." Not so, says Popeo. Criminals often have assets—real estate, a car, an inheritance. And their wages after release from jail can be attached—for up to 20 years in many states. Thus, WLF plans a major effort to teach violent criminals (and the general public) that crime does not pay.

• *OSHA Exemption.* Over two million small businesses will be exempted from all regulation by the Occupational Safety and Health Administration, if the House concurs with a Senate-passed bill. The measure would exempt all low-risk workplaces with 10 or fewer employees from OSHA inspection. OSHA spokesperson Frank Geer, obviously needing to bone up on his political philosophy, complained that the measure would deny workers "fundamental human rights."

This column reports trends in the advancement of liberty and economic freedom. Readers are invited to submit material of potential interest to Trends Editor, REASON, Box 40105, Santa Barbara, CA 93103.

Slashing Taxes Is Good For What Ails Us

It worked for the French peasants in 1800. It worked for the Italians in the Great Depression. It's working for the Japanese right now.

by Christopher P. Weber

JUST a few months ago, when news of California's tax-slashing Jarvis-Gann initiative began to spread across the continent, it wasn't taken very seriously. And indeed, there seemed little reason why it should be: it strove, not to "put a limit" on California property taxes, not even to cut them back by a modest figure, but to slash them by an average of 65 percent! To the establishment who bitterly opposed it, Proposition 13 sounded at first like only a bad joke, but as it turned out, 65 percent was approximately the proportion of the voters that embraced it.

Since its passage in June, other states are quickly readying their own versions of tax reduction. On a national level, the Republican Party announced on July 6 that it would incorporate into its platform for the coming congressional elections a plank calling for a one-third reduction in the federal income tax, to be administered across-the-board. When Howard Jarvis, the coauthor of Proposition 13, came to Washington shortly after June's referendum, he was mobbed by congressmen who wanted to have their pictures taken while embracing him.

This is certainly a turnabout from the vicious scare campaign waged by the establishment in the weeks just preceding the election. Cutting taxes so deeply, they said, would cause a depression; some even claimed that businesses would flee California and that none would expand into the state. As the tax revolt spreads across the United States, a concerted effort on the part of government employees will surely be made to stop it. They will bring up these arguments, and more.

TAXES HAVE CONSEQUENCES

John C. Calhoun, vice-president under Andrew Jackson, pointed out with dazzling clarity that however small the government might be, and however small might be the tax burden, the very existence of taxation itself creates two unequal and inherently conflicting classes in society: those who, on net, pay the taxes (the "tax payers") and those who, on net, *live off* the taxes (the "tax consumers"). It should be clear that, regardless of legal form, bureaucrats *pay no taxes*; they consume taxes. Additional beneficiaries of taxes are those in society subsidized by the government, be they armament manufacturers or common welfare recipients. Once a State has cemented a large group of both its members and its subsidized adherents to its cause, it can usually count on the apathy and ignorance of the remainder of the public—*usually*, but definitely not when the populace is continually buffeted by steep and increasing taxes. This is, fortunately, what is happening today.

Taxation always has a twofold effect: it distorts the allocation of resources in the society, so that consumers can no longer most efficiently satisfy their wants, and it

severs the production of goods from their distribution. This is true of any sort of tax, be it sales tax, property tax, or income tax, either progressive or proportional in type.

The higher the tax is, the more the producers are crippled at the expense of nonproducers. Hence, the higher the level of taxation, the lower will be both the level of production and the standard of living. It should be enlightening to turn to a series of case studies that demonstrate the above.

FRENCH TAX REVOLT: 1789

The French Revolution was caused, in large measure, by crushing taxes. By 1789, the year the Parisian mob sacked the Bastille, the French peasant was clearly being looted beyond the limits of his endurance. On 100 francs of income, he paid 53 to the State, 14 to the Church, and 14 to his seigneur, his lord of the manor. This adds up to 81 percent; he kept less than 20 percent for himself. Ten years after it began, Napoleon gained control of the revolution, and he was wise enough to reverse the situation. As a result of one of his first actions, by 1800 the same peasant paid nothing to the Church, nothing to his local lord, only a pittance to the State, and 25 percent to his *commune* and *departement*, his village and province. Thus, out of 100 francs of income, 70 remained in his own pocket.

Napoleon did this against the advice of all the "official" economists of his day; in fact, he refused even to talk to them. With sterling common sense he wrote to his brother Lucien on Christmas Day, 1799, that, "While an individual owner, with a personal interest in his property, is always wide awake, and brings his plans to fruition, communal interest is inherently sleepy and unproductive." Not surprisingly, the greatly lowered taxes unleashed the tremendous productive capabilities of the French people, and Napoleon was able to conquer most of continental Europe with that wealth behind him.

It was his actions *against* the free market that contributed to his eventual defeat, even setting aside the tremendous waste entailed in those wars. Unfortunately, Napoleon didn't realize that international trade benefits everyone, and when he put a comprehensive embargo on English goods, he invited the "disobedience" of his allies. Russia continued to trade with Britain—this was the cause of Napoleon's ill-fated Russian campaign, which gave him a defeat from which he never recovered. Further, while the emperor lowered taxes—and raised his popularity—at home, he taxed his conquered lands to the hilt. When those resources finally stopped producing, he turned back to the French and piled new taxes on them. This, in addition to the steady drain of French sons for war, was too much. He lost the support of his subjects even before Waterloo, in 1815.

THE PAX BRITANNICA

At the close of the Napoleonic wars, Great Britain was the strongest nation on earth and ready to become the richest in history. But while this is apparent to us now, it didn't seem so at the time. For by war's end, Britain was reeling under a massive public debt of almost one billion pounds, an inflation unprecedented in her history, and a staggering tax-rate system. In 1820 the *Edinburgh Review* had this to say on how everyday life had been infiltrated by taxes: "The schoolboy whips his taxed top; the beardless youth rides his taxed horse, with a taxed bridle, on a taxed road; and the dying Englishman, pouring his medicine, which has paid [i.e., has been taxed] 7 percent, into a spoon that has paid 15 percent, flings himself upon his chintz bed, which has paid 22 percent, and expires into the arms of an apothecary, who has a license of 100 pounds for the privilege of putting him to death. His whole property is then immediately taxed from 2 to 10 percent. Besides the probate, large fees are demanded for burying him in the chancel. His virtues are handed down to posterity on taxed marble, and he will then be gathered to his fathers to be taxed no more."

Fortunately, the British Parliament acted. In the years immediately following the war, the income tax was abolished even though it had been responsible for a fifth of all revenues. Not surprisingly, between 1815 and 1851 there occurred the most rapid economic development of domestic resources in British economic history. By 1860 she was producing half the world's output of coal and manufactured goods. Britain had become not only the world's workshop but its banker and trader as well. Further, the problems that had loomed so large in 1815 evaporated. Prices tumbled and then continued to decline gently throughout the rest of the century. And the public debt, which had been growing for over a century, was gradually chiseled down, by 40 percent at the century's close. And such tariffs as the Corn Laws, which had for so long caused misery and even (in Ireland) starvation, were eliminated.

In the light of these policies it is no wonder that the 19th century belonged to Britain. The same, alas, cannot be said of the 20th. After the First World War British politicians did everything that their ancestors a century before did *not* do. Income taxes, which had been very nearly proportional, with everyone paying the same percentage, became progressive, and steep. There was no postwar economic expansion. In fact, Britain staggered through the 1920s in deep recession, if not, indeed, outright depression. By 1931 Britain had lost faith in the "free-market" principles she held responsible for her plight, went off gold, and reerected tariffs. England's economic history since then makes for sad reading.

AMERICA CUTS TAXES

In the years just preceding World War I, the wartime Wilson administration had imposed high tax rates—an excess profits tax on business, a doubling of the normal corporate rate to 12 percent, and sharp increases in personal income tax rates, the tax which had only come into being three years before. The "old" 15 percent rate on incomes of $2 million and above gave way to a 77 percent rate on incomes above $1 million. The lowest bracket, 2 percent on $20,000, became a 6 percent rate on only $4,000. At war's end, the Democrats in power left these rates in force.

During the 1920 elections, Republican presidential candidate Warren Harding told the GOP convention, "I believe the tax burdens imposed for the war emergency must be revised to the needs of peace." He won the presidency by the greatest landslide then experienced. Harding kept his promise. The wartime excess profits tax was abolished, and Treasury Secretary Andrew Mellon pushed for a slashing of the top tax bracket from 77 percent to 25 percent. Congress was reluctant at first to take such bold action but acted in concert with him as it saw the beneficial effects on production of the gradual tax cuts. In 1922 the top rate was lowered to 56 percent, 46 percent in 1924, and finally to 25 percent in 1925. By 1929 the top tax rate was 24 percent, the lowest one was a bare three-eighths of one percent.

The true cause of the "Italian Miracle" was Mussolini's remarkably free-market policies—at least until 1935.

Consequently, the decade of the 1920s was among the most productive in American history—so much so that even the massive inflation being perpetrated by the government during those years did not have the effect of raising prices absolutely, although the credit expansion did raise prices *relative* to what they would have been otherwise. Prices would have dropped sharply over the decade because of this increased productivity, had it not been for the inflation. But regardless of whether consumer prices rose absolutely

as well as relatively, the inflation caused the boom-bust cycle that was responsible for the Great Depression.

"IL MIRACOLO ITALIANO"

The Great Depression was a world depression, but during the 1930s Italy suffered much less contraction than the other industrial nations. This good performance was watched by Hitler and Roosevelt, who—misunderstanding the cause of the success and attributing it to the corporate-state fascism where government and business joined together against *laissez-faire*—sought to incorporate these elements into their own economies.

The enchantment with Mussolini's corporatism was misplaced. He was not practicing what he preached. The true cause of the "Italian miracle" was his remarkably free-market policies — at least until 1935—while keeping the form of fascism. Soon after Mussolini attained power in 1922, he appointed Alberto de Stefani as finance minister. De Stefani quickly instituted a policy whereby public enterprise gave way to private initiative wherever possible. Public controls over production were abolished, and taxes were slashed. Added to this, a hard-money policy was instituted.

This program lasted throughout the '20s and early '30s. Not until late 1935 did Mussolini seriously begin chipping away at it, and when he raised taxes a year later to finance his invasion of Ethiopia, the economy soured. He imposed more taxes in October 1937, and his popular support plummeted with the economy.

INDIA BOOMS

When Indira Gandhi suspended democratic rule and civil liberties three summers ago, the world was not prepared for the display of economic health that followed. Inflation dropped and the rupee rose on foreign exchange markets. Production increased dramatically. Some superficial observers believed that the dictatorship was actually good for India. But certainly, the censorship and numerous prison terms by themselves would have insured revolution or at least guerrilla warfare.

Generally unnoticed and unreported in the West, however, were the policies of Gandhi's finance minister, C. Subramaniam, who used the suspension of Parliament to push through his pet scheme of lowering taxes. Not only was the 12 percent surtax removed, but the top rates were twice hacked at: They went from 85 percent to 77 percent and then to 66 percent in a matter of months. Other brackets were likewise adjusted. Whereas the 60 percent bracket was reached at $5,000 before, it was changed to $10,000. The wealth tax had been at 8 percent but was slashed to 2½ percent. The urban property wealth tax, which had ranged from 5 to 7 percent, was abolished entirely. Corporate tax rates were cut, and progressive taxes on investment and royalty income yielded to proportional rates.

These decrees had almost instant effects. Price inflation, which had been running at 30 percent annually, fell to 10 percent, and a real growth rate of 3 percent was registered in the following six months (the last half of 1975)—a period of contraction elsewhere in the world. Excess crops came in from the farms in a land where starvation is always just around the corner. Real growth registered a striking 10 percent rise during 1976, and during this year the consumer price index declined. Foreign reserves piled up at the rate of $150 million per month, even as India's bill for imported oil doubled.

Unfortunately for Mrs. Gandhi, she never realized that it was her finance minister's policies, and not her dictatorial actions, that had caused her upswing in popularity. Accordingly, instead of cutting taxes still further, she began new spending programs. This, added to such heavy-handed and authoritarian policies as her forced birth-control program, was enough to get her pitched out of office when she called elections in early 1977. Almost her entire cabinet was thrown out along with her (for they must stand for reelection, too, in India). Interestingly, Finance Minister Subramaniam was one of the few Congress Party members returned to his seat in Parliament.

Either outright or through loopholes, the Japanese have cut taxes every single year since 1950.

A TALE OF TWO MIRACLES

Germany found herself at war's end with almost unbelievably high tax rates, a legacy from the Nazi era. At an annual income of $600, a German paid fully 50 percent of it in taxes. The top bracket was a punishing 95 percent rate on incomes exceeding $15,000. On June 22, 1948, Finance Minister Ludwig Erhard announced cuts that pushed the "lowest" 50 percent rate up to $2,200 and the 95 percent rate to $63,000. Reforms continued, until by 1955, the 50 percent bracket had been pushed up to $42,000 and the top bracket to $250,000, with the top rate slashed to 63 percent. Still another tax reform took place in 1958. This one exempted the first $400 of income altogether, cut further in the middle brackets, and brought the top rate down to 53 percent.

During this time, the tax rate on dividend income had fallen from 65 percent to 15 percent. And to cap all this off, the mark was stabilized and kept scarce, and the wartime controls on production were swept away. All of these reforms, incidentally, took place against the wishes of the Keynesian American advisors sent to plague Erhard. He succeeded in circumventing them, however: he announced his abolition of economic controls on a quiet Sunday, when scarcely anyone was watching. The tremendous economic progress made by Germany since World War II speaks for the success of these moves.

Postwar Japan freed up her economy and productive capabilities by a different process, which still yielded the same result. Instead of actually lowering the tax rates, the tax code there was punctured with loopholes.

The occupying American forces, along with giving Japan a US-style constitution, gave Japan in 1947 a US-style progressive tax system. The 85 percent rate was reached at $14,000, with the result that the Japanese economy was, in the words of one commentator, "going nowhere fast." This should serve as a reminder that there is nothing inherently industrious about the Japanese people; when crippled by taxes, they, too, stop producing.

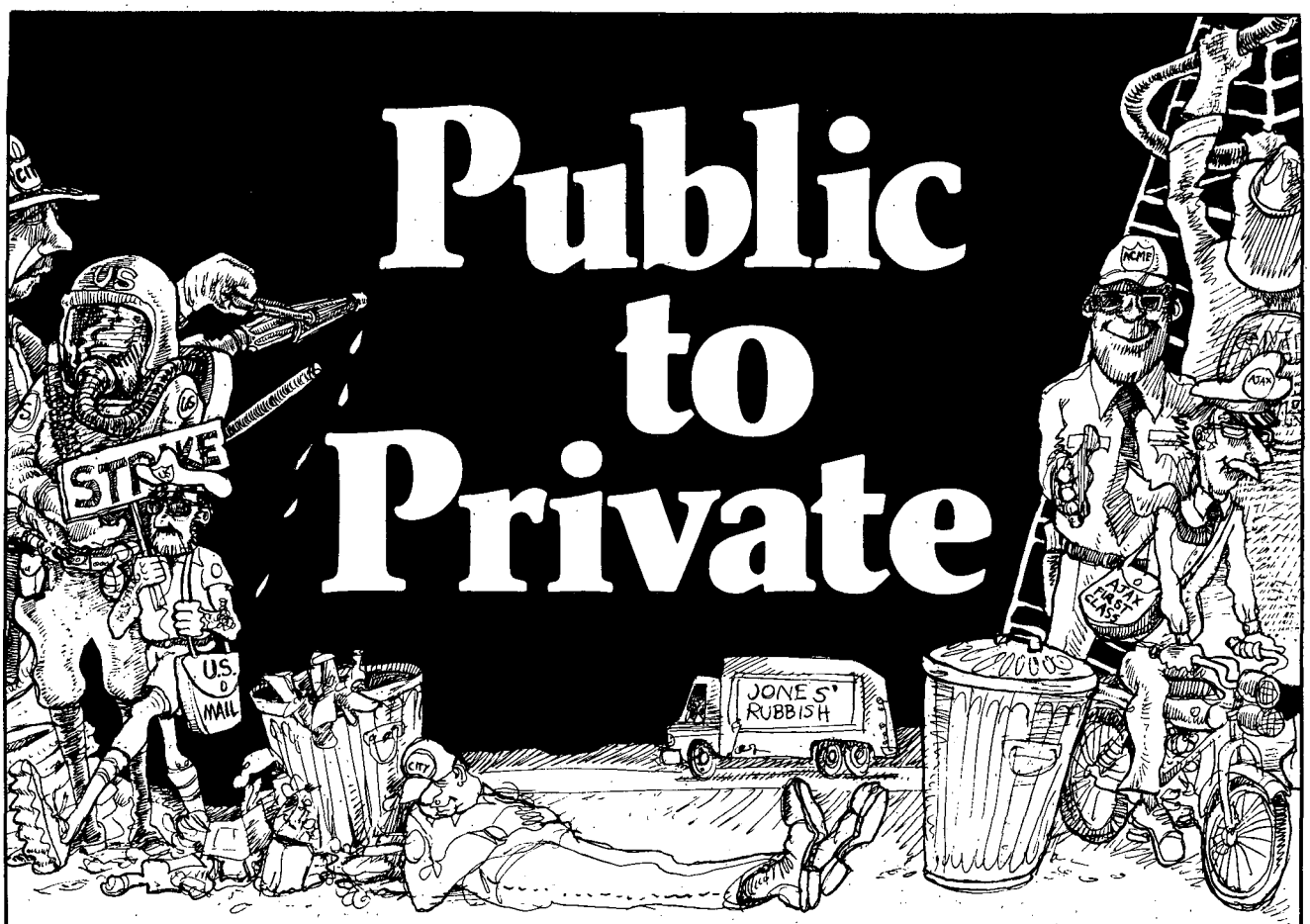
The American response to this economic stagnation was to send over in 1949 a team of professors who recommended an overhaul of the system that would have meant even higher taxes! The Japanese accepted the American plan but proceeded to exempt huge slabs of income from any taxation at all. So even though the top Japanese tax bite is 93 percent on income above $300,000, there are so many exemptions that this nominal rate almost never applies.

Instead of creating huge government bureaucracies to distribute social services, businesses themselves provide the services to their employees and are allowed to count these as business expenses. The first $40,000 of pension payments are tax free. Gift and estate taxes are high, but because the tax is levied on the heirs after an estate has been subdivided, only rarely is an estate taxed at the high rates. Wealthy Japanese need only adopt children to avoid paying the higher tax rates on estates that apply to nonchildren. Often these "children" are the grown sons of friends or "poor but promising" students.

Most remarkable of all, the Japanese have cut taxes on either personal or business income every single year since 1950, either outright or through loopholes. From 1950 to 1974, Japan cut tax rates by roughly 11 percent annually. Over these

(*Continued on p. 24.*)

Public to Private



With tax substitution, you pays your money and takes your choice.

by Fred E. Foldvary

LOOK IT UP in a dictionary and you will find two basic meanings for the word *tax*. The concise Thorndike Barnhart pocket dictionary defines it as:

1. money paid by people for the support of the government.
2. a burden, duty, or demand that oppresses.

The first definition needs the qualifier that the money is forcibly extracted from the people. Then the second definition naturally follows from the first.

The alleged purpose of taxation is to provide the money the government "needs" in order to solve national "problems." But taxes have come to consume such a large portion of our income and wealth that they have themselves become a national problem. As Rickenbacker and Uhler pointed out recently (REASON, June 1978), most attempts at tax reform have merely shifted "the burden from one set of productive citizens to another set... while the total burden has kept right on growing." The only hope, as they noted, is fundamental constitutional tax reform.

We can think up many ideal systems to do away with taxes, including total anarchism with no taxes at all. But a more immediate challenge is to find a politically palatable method of "getting from here to there." We need to formulate fundamental tax reforms that will readily appeal to the popular disgust with high taxation and big government and have a good chance of being adopted by the voters. One such method is tax substitution.

A basic problem with many tax-limitation measures is that they usually do not include expenditure limitations as well. Faced with property tax limits, the government may respond with increased sales and income taxes in order to preserve its services and the jobs of public employees. The beauty of tax substitution is that in one fell swoop it eliminates taxes *and* simultaneously eliminates the associated government expenditures!

There are several possible approaches to tax substitution. The one described here can be defined essentially as the replacement of government services that are paid for by mandatory taxes with similar services freely chosen by the individual, and the corresponding reduction of the individual's tax liability. The rationale behind it is that government services are supposed to fill some "need," and if an individual can fill that need by alternative, nongovernmental means, then he should not have to pay for his share of that government service.

How would such tax substitution work in particular cases?

EDUCATION

The educational tax credit now being considered by Congress is a step toward tax substitution, though not quite the same thing. It would allow someone to deduct a certain amount of school tuition from his federal income taxes, reducing part of the burden of sending a student to a private school or college.

Under tax substitution, one would be able to deduct *all* tuition expense for private education, up to the government's average per capital expense. For educa-

tion, that would be the average cost per student (hereafter denoted by ACPS, the government's total educational expenditures divided by the number of students).

If someone sends his child to a private school instead of the local public school, he saves the government the cost of educating his child. Thus, under tax substitution, he doesn't have to pay that cost. The tax reduction should not exceed the ACPS, however. Assume that the ACPS is $2,000 per year and the tuition at a high-class academy is $4,000. If someone can deduct only the $2,000, he saves the government $2,000 and transfers the savings to the private academy. But if he could deduct the entire $4,000, that would leave the government with $2,000 less than the savings from one less student (assuming the marginal cost equals the average), and it would have to raise taxes to keep the same ACPS, thus shifting the tax burden to others.

The point of tax substitution is not to shift the tax burden to others but to eliminate it on the individual level. One is free under tax substitution to pay more for education than the ACPS, but it comes from one's own pocket.

What if the tuition of a private school is less than the ACPS? If a service can be demonstrated to be the equivalent of the government service, despite its lower cost, then one should be able to deduct the average government cost from one's taxes. In education this is a very tricky and subjective thing to prove. As a rough rule of thumb, perhaps elementary and high school tuition generally ought to be deducted at the ACPS, but college education only by the actual amount of tuition spent, since the type and quality of higher education can vary so much.

Parents with several children in private schools and colleges could find that their total tuition expenses exceed their tax liability. Would the government then have to pay them money under tax substitution? The answer for a proper system is a definite *no*. The purpose of tax substitution is to eliminate taxes for the individual, not to force others to support his private services. Once a person has substituted all his taxes with private services, he should be on his own.

A basic principle of tax substitution is that the deduction is made from the tax of the agency that is financing the service being substituted. For example, if the tax for education is collected by a school district, the substitution is deducted from the taxes owed to that school district. This is different from the federal tuition tax credit proposal, in which the deduction applies only to the federal income tax.

The complicating factor is that many services, including education, are now being paid for by a combination of local, state, and federal moneys. The tax substitution would only apply to that portion of the expenditure spent by the corresponding agency. For example, if the ACPS was $2,000 but the local school tax only covered $1,000 of that, the local tax deduction would have an upper limit of $1,000 per student. If tax substitution were adopted by the state and federal governments, then the rest of the tuition could be deducted from those taxes. The assumption here is that the school district receives the outside funds on a per-student basis. If it receives a fixed sum, then the full ACPS could well be deducted.

The private school or college should not necessarily have to be located within the taxing government's jurisdiction. The resident is saving his local district or state the expense of educating his child, and therefore the location of the private school is irrelevant.

PUBLIC EDUCATION FEES

Under tax substitution, the tuition or fees paid for public (government-operated) colleges should not be deductible from taxes. Why not? Because the student or his parent is paying a direct fee for that service. If that fee could be deducted from one's taxes, it would be the same as getting that service for nothing—or rather, forcing others, through taxes, to subsidize the service.

The tuition for private education, on the other hand, saves the taxpayers from having to subsidize the student's education. Note that the subsidy for public college education is the ACPS *minus* the tuition charged per student. Therefore it follows that under a proper tax substitution system the amount of private college tuition subject to tax deductions is the tuition paid *above* that charged by the state colleges.

Let's look at an example. Say that the ACPS for state colleges is $6,000 and their tuition is $1,000 per year per student. If someone spent $7,000 for tuition in a private college, the deduction from his taxes would be $5,000, the amount of subsidy being offered by the state for public college education. If someone's private tuition were only $5,000, the tax deduction would be $4,000—his $5,000 minus the $1,000 charged by the state. So everyone has to pay, without any tax credits, at least the $1,000 minimum charged by the state. In the extreme, if the state charged the full ACPS as tuition and there was no educational subsidy, then there would be no tax substitution for education because there would be no taxes for it! You would simply pay for the school of your choice.

A complicating factor is that the various state colleges and universities may charge different amounts of tuition and have different ACPS's. The private colleges would have to be ranked, for example, as equivalent to either a community college, a state college, or a university, and the amount of tuition subject to tax substitution would be adjusted accordingly.

Tax substitution in education would give parents a free choice about where to educate their children. It would enable them to choose alternative schools without suffering the double burden of also having to support the public schools. The state schools would therefore have to compete on an equal monetary level with the private schools, at least for those families that pay taxes. (A voucher system could be designed for those who do not pay taxes, but that is a subject beyond tax substitution itself.) Tax substitution produces an equitable system, for in a free society we should not be penalized for choosing an education more compatible with our culture and values than that offered by the government.

GOVERNMENT SERVICES

Each type of service has its own particular unit of cost, and a general tax-substitution provision has to specify in detail how the costs would be substituted. The following examples illustrate some possible ways of handling various categories of costs.

Garbage collection. For a service like garbage disposal, which is paid for by the household, the substituter would simply pay the alternative service rather than the one sponsored by the government.

If a city garbage service were partially subsidized, then the substituter would also be able to deduct part of his fees from his city taxes. For example, if the city charged $4 per month for refuse pickup, but its average cost per household was actually $8, with the difference paid for by taxes, a resident who paid $7 for a private service would be able to deduct the extra $3 from his city taxes, similar to the system described for education.

Besides the tax deduction, tax substitution necessarily involves a demonopolization of government services. Cities such as San Francisco that have franchises (that is, monopolies) for private garbage companies would have to allow any company or individual to set up in the refuse collection and disposal business as long as the garbage was disposed of in a proper manner—for example, without violating any property rights. The whole purpose of tax substitution is to give the taxpayers a free choice in selecting the service that best fits their needs.

San Francisco uses a cost-plus-five-percent formula for setting garbage rates, which encourages the companies to have high expenses and salaries. Alternative services would try to increase their markets by minimizing their costs and thus

would make the cost-plus formulas of guaranteed profits obsolete.

A problem might arise for individuals who wish to dispose of their own garbage personally. How are any freeloaders to be prevented from dumping their garbage in a lake or in their neighbors' garbage cans? Those who do not have receipts for garbage collection might be asked to show some evidence that they are recycling or otherwise disposing of their garbage without invading other people's property rights.

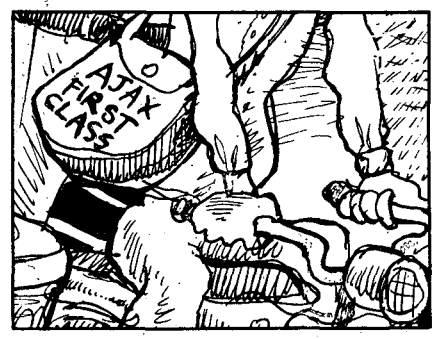
Police. Since the police are supposed to provide for both personal safety and the protection of property, a fair measurement of its cost might be an average of its expenditure per household and per dollar of property. The property value should exclude land, since land cannot usually be stolen or destroyed. In Berkeley, California, for example, the 1978-79 police budget is about $6 million, plus over $1 million in employee benefits, making a total cost of about $7 million. Given approximately 30,000 households, the cost is about $233 per residence. With about $520 million in assessed property (ignoring the land component), the police cost is about $1 per $75 of property. An average of the personal and the property cost would give $117 per household plus $1 per $150 of assessed property value. Someone whose property was assessed at $30,000 would be able to deduct up to $317 ($117 personal plus $200 property) from his taxes for his police substitute. A business would be able to deduct an amount proportional to its property value, exclusive of land.

Unlike garbage collection, police service is not an all-or-nothing proposition. People can use variable amounts of it. No more than the amount of funds actually spent for private police protection would be deductible from the city taxes. This might include the cost of certain goods, such as burglar alarm systems.

Tax substitution for the police should be limited to criminal investigations and the protection against violence, theft, and other types of coercion. Private guards and investigators are already being used by businesses and individuals. They perform the "front end" of police protection—guarding banks and stores from theft, keeping watch on who enters and leaves, and investigating crimes. A guard may detain a shoplifter or use force to stop a criminal from harming someone, but the "back end" of law enforcement, arraigning the suspects and punishing the convicts, is still the exclusive realm of the government's police, district attorneys, courts, and penal institutions. As long as the "back end" remains the exclusive jurisdiction of the government, tax substitution for the police would have to be limited to the "front end" jobs of guarding and investigating.

If a thief broke into your house, triggering a silent alarm that alerted your protection agency's patrol car, and they rushed to your house and caught the culprit, they would then hand him over to the city police and the district attorney to try and convict. Since tax substitution should not be a free lunch, those who substitute private protection or investigation for the public service would no longer be eligible for free "front end" protection. The substitute laws could include a provision that if a person has subscribed to a private service he could still use the city police if he paid a fee each time he needed their assistance.

For many people, the local police simply do not provide good protection. Law enforcement authorities often refuse to interfere in "labor disputes" even when they include threats and violence against small companies that don't want to sign union contracts. Many people—political rebels, drug users, ethnic minorities—have been victims of police aggression. Under tax substitution people would be able to pay private guards to help protect themselves from violence instead of being forced to pay for an unresponsive or even hostile government police force.



The point of tax substitution is *not* to shift the tax burden to others but to eliminate it for the individual.

Instead of paying the police to chase after prostitutes, investigate bingo games for gambling offenses, and bust marijuana parties, many people might prefer to pay guards to protect their homes and streets. In order to stay in business and prevent a massive drain of city funds to private protection agencies, the police might well have to deemphasize victimless acts and concentrate on real crime! Tax substitution could compel the police to be more responsive to their true purpose—the protection of lives and property from violence and theft.

Charity. The biggest tax burden is at the national level, and much of this is used for welfare transfer payments. Could welfare, such as aid to the poor and sick, be tax substituted? Certainly! In fact, welfare is an excellent candidate for it. Aside from the inherent wrongs of our welfare programs, their inefficiency and abuse is beyond all hope unless something better can be substituted for them.

In his book *Libertarianism* John Hospers describes a company that provided scholarships for needy students as well as summer camps for underprivileged youths. The company continued the programs even though its taxes kept increasing. Then the president of the company learned that the government was spending $13,000 per year per student on the Job Corps. He could have trained them himself at one-tenth the cost. That was the unfortunate demise of the company's voluntary charity. If the government was taxing the company and forcing it to provide for these wasteful programs, then the company would give up its own projects.

But under tax substitution, the story would have had a different ending. The company would have been able to deduct its voluntary charity directly from its taxes. Not only would it have continued its "welfare" programs, it would have most likely been outraged enough by the gross costs of the Job Corps to start its own training program at a fraction of the cost and deduct that cost from its taxes too. The candidates would have received better, more practical training and, if the company could have done the job at one-tenth the government cost, the taxpayers would have saved $11,700 for each candidate transferred from public to private training.

Under tax substitution people could also deduct their contributions, for example, to cancer research directly from their taxes (instead of from their gross income) and could support programs such as nutritional research instead of the government's cancer establishment.

For services that the taxpayers can actually use, such as the police, the amount of substitutable taxes should be limited to the government's average cost per unit of service. Welfare transfer payments, though, is one "service" that taxpayers generally do not consume themselves. By definition it is a "service" that is paid for the benefit of others. The upper limit of welfare substitution should therefore be the proportion of one's tax bill that is spent for welfare. For example, if 40 percent of the federal budget is devoted to aiding the poor and the sick, then up to 40 percent of one's taxes would be substitutable for similar private welfare programs. If 5 percent of the budget goes to health research programs, then up to 5 percent

of one's federal taxes could be substituted for private cancer research and other such programs.

There should also be a second limitation: the average cost per welfare recipient. For example, if the Job Corps has an average cost of $13,000 per trainee, then a similar private job program may only receive tax-substitutable donations of up to $13,000 per trainee. If for some odd reason it was spending $26,000 per candidate, then only half of one's donation to that organization could be tax-substituted.

Only charities that replace government programs should be eligible for tax substitution. Donations to the Girl Scouts and Boy Scouts would not be eligible, since these are not devoted to aiding the "needy," but if the Girl Scouts had a special project that aided underprivileged girls, that would be eligible. Donations to local neighborhood free clinics or emergency food projects should certainly be eligible, and tax substitution would encourage these small, home-town charities that are so much more effective than the federal behemoths.

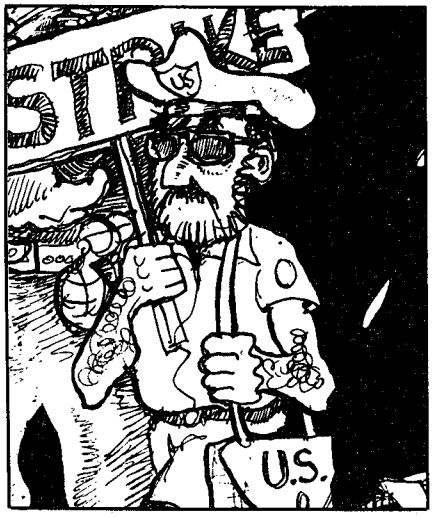
National defense. Even in national defense there is room for tax substitution! Here the cost unit would be the proportion of federal funds devoted to defense and the military. If 25 percent of the budget goes to national defense, then up to 25 percent of one's federal income taxes could be substituted for one's own military defenses. But what kind of personal expenditure would that be?

Bomb shelters, for one thing. Clearly civil defense is a part of national defense. The Soviets are certainly making it part of their military strategy. Just because the US government has chosen to deemphasize civil defense does not mean that a citizen or a community should not provide for its own defense from attack. The cost of building and maintaining a bomb shelter would be deductible from federal income taxes, although the cost of storing food would not, since it would eventually be used for personal consumption.

Intergovernmental substitution. Tax substitution can also be used by governments themselves. The city of Berkeley likes to run its own health department even though Alameda County also has one. The taxpayers of Berkeley have to support two health departments, even though they don't use the county's program. Since Berkeley is substituting its own health programs for those of the county, under tax substitution the Berkeley residents would be able to deduct the average per capita cost of the Alameda system from their county taxes, or else Berkeley would receive the equivalent funds from the county. The same method would apply to a state that chooses to substitute its own services for those of the federal government.

ADMINISTRATION

The catch in tax substitution is that someone has to decide which private schools or voluntary charities qualify as genuine substitutes for government programs. Otherwise, phony organizations would spring up, and the substitutes would simply be used to evade taxes. Some kind of organization has to be set up to safeguard the taxpayers and legitimate substitutes against fraud.



We need fundamental tax reforms that will readily appeal to the popular disgust with high taxation and big government.

This could be accomplished in much the same way as the government currently handles tax-exempt nonprofit organizations. A company's records could be examined to verify that it was indeed performing as a substitute for government services. Under a good tax-substitute system the burden of proving the ineligibility of a purchased alternative would rest with the government rather than the tax substitute. If the government challenged an agency but failed to prove that the agent was not eligible, it would have to pay for the defendant's expenses. This would minimize the harassment of tax substitutes.

There could also be special boards or commissions to administer tax substitution independently of the rest of the government. They would be able to conduct audits of government agencies to determine their true costs. (Generally the average unit cost of a government program would simply be its total budget divided by the number of beneficiaries, such as households, students, or welfare recipients.) Though this would add one more body to our menagerie of government, it would be a board uniquely dedicated to a method for reducing government programs rather than increasing them.

PARTIAL REFORM

Tax substitution is itself not a replacement for comprehensive tax reforms and limitations on government spending. Many taxes and government "services" should be abolished entirely rather than merely substituted. Some of these "services," such as poisoning marijuana plants (and Americans) with paraquat, are really the grossest disservices.

The fact that tax substitution allows taxpayers to exchange their own programs for those of the government does not mean that the latter are in any way justified. *Tax substitution does not imply any moral judgment concerning any particular government service.* It is simply a means of demonopolizing these services and giving individuals the choice of substituting their own education, police, charity, etc., instead of being forced to pay for and use inefficient, unresponsive, and corrupted government programs. The moral position inherent in tax substitution is that education, welfare, and other services should not be government monopolies and that the taxpayers should not be forced to support them as such if they can buy the same product through other channels.

Tax substitution is a bridge between the ideal of giving each individual more control over his own life and the growing popular resentment against taxes and big government. Politicians always pledge to cut taxes and control spending, yet once in office they find it difficult to resist the appeals of special interests, including their own. But tax substitution lets the individual cut his own taxes and automatically reduces the government's role in that program. Thus it should appeal to the taxpayers as a whole. The main special interest that would oppose it is government officialdom and the public employees, but even they might appreciate the job opportunities of the private alternatives as well as the tax benefits to themselves.

In some fields, such as welfare, tax substitution would most likely reduce spending more than it would reduce taxes, producing a net saving in government costs. In other areas, such as education, where some people are already supporting nongovernment alternatives, it would probably reduce taxes more than the expenditures. This would place the burden of supporting these services on the general tax-

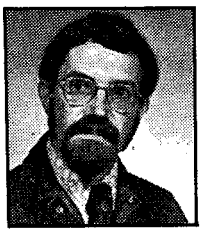
payers, who supposedly benefit from them, and away from the tax substituters, who are not using them.

We can hardly expect the government to implement tax substitution. The voters, through initiatives and constitutional conventions, will have to adopt it themselves. Tax substitution could act as a complement to other tax reforms and efforts to reduce the scope of government.

Ultimately, tax substitution could result in a massive shift from government-mandated services to those individually chosen from a wide range of free-market alternatives, with much of education, welfare, and other services in private hands. Some government expenditures, though, cannot be substituted away. In particular, the public debt is something that simply has to be paid.

Tax substitution has a major role to play in the quest for tax limitation and reform. It is not a panacea, but it *is* a path toward economic freedom. ◻

Fred Foldvary has a background in economics and computer science and is a systems analyst for the Educational Testing Service and a free-lance writer.



Weber

(Continued from p. 19.)

years the reductions usually have been made with the argument that they would encourage savings. They have done that, but they have also boosted production. Japan's Gross National Product has skyrocketed from $16 billion in 1952 to $300 billion in 1972, a 19-fold increase.

From even this brief summary, it should be clear that, far from the cry of the tax-consuming hordes against Proposition 13, cutting taxes will *not* cause a depression; it will rather cause living standards to spurt.

Fortunately, however, the tide is with those who want to cut taxes. But, paradoxical as it may at first appear, the greatest obstacle to true tax reform are those tax cutters whose ideas are currently influential.

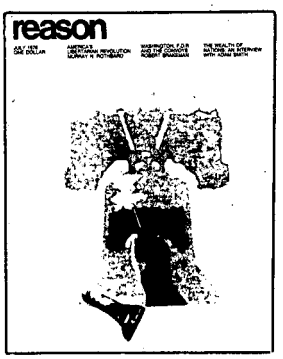
In its July 3 issue, *Newsweek* magazine called Dr. Arthur Laffer of the USC School of Business Administration the "guru of the tax revolt." The "Laffer Curve" is an idea rapidly gaining currency both in Congress, where Republican Congressman Jack Kemp of New York is pushing it on the floor, and in the media, where Mr. Jude Wanniski of the *Wall Street Journal* is advocating it. Briefly, the Laffer Curve refers to the idea that taxes could be easily lowered—and give even more revenue to the government. Here's how the Lafferites think: production will be stifled at high levels of taxation. In fact, put taxes too high and production ceases. By traveling "down the curve" to lower taxes, production increases *and there is more to tax.* The trick is to find just that level of taxation at which the economy is producing at an optimal level while rendering the greatest possible revenue to government.

Our view, on the other hand, is that we have no interest in a plan that seeks as its objective to strengthen the State, that instrument of coercion and destruction. The historical experience clearly shows that reducing taxes is good for people. What it does to government revenues cannot give any fundamental support to the tax revolt. ◻

Mr. Weber is a contributing editor to World Market Perspective, *from which this article is adapted.* *Copyright 1978 by ERC Publishing Co., Box 91491, West Vancouver, BC, Canada V7V 3P2.*

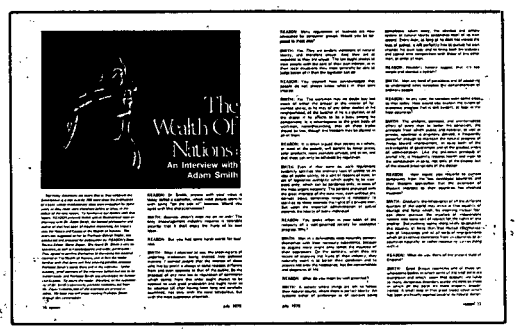
Have You Seen...

REASON's issue on the first tax revolt—the one against the British government?



July 1976 $1.50

This issue features REASON's bicentennial commemoration of the American Revolution, a struggle to get out from under oppressive British taxation and interference. Historians Murray Rothbard and William Marina show that those momentous events flowed from popular dissatisfaction with government. And Marty Zupan interviews the great 18th-century laissez-faire economist Adam Smith, who thought that Britain's insistence on keeping America a colony was misguided and bound to fail. Also in the issue are Robert Brakeman's contrast of Washington's and FDR's decisions on the convoying of US merchant ships and John J. Pierce's discussion of revolutionary science fiction.



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Seizing the Day

"Any news on Earth since I've been away, Sprinjj?"

"Yes sir. An intense tax revolt concept with full media backing has entered the consciousness of the American people since May 1978. The trigger was a local tax initiative in California."

"So soon? Well, this is good news! We hadn't expected it before 1980. Do you know that this is a key event, Sprinjj? A turning point of the first significance. It's firm evidence that Earth is going to make it to the next stage. Good for them!"

The tax revolt is only the first step. Growing anti-government sentiment offers business an unparalleled opportunity to break the dominance of the State.

by Derek Brownlee

AMERICA is in controlled revolt. Cued by the media, the people are focusing their rebellion on a single target: taxes. And into this rebellion is going all the frustration of years of living with government that seems more like an uncontrollable cancerous growth than like a public servant.

It is a *controlled revolt* because the mass media make the mass consciousness. In this case they have struck an unusually powerful response, but they are still responsible for coordinating and amplifying it. And their massive efforts in this direction suggest a policy of backing the tax revolt, of promoting it to the limit.

Who is backing the tax revolt? and why? Where can the tax cutting and reduction in government go with this kind of backing?

A TITANIC STRUGGLE

There are two schools of thought regarding the power of the media. One maintains that they reflect what the people want and cater to free choice. The other insists that people are manipulated and indoctrinated by the advertisers and the owners. Both are correct. What the mass media put out must be acceptable to the public and to the major business interests.

The extent to which big business determines acceptable topics for public dissemination has been amply covered in such books as *Television in the Corporate Interest* by Richard Bunce, *The Sponsor* by Erik Barnouw, and the landmark study *News from Nowhere* by Edward Epstein, which deals with news management and selection. Applying this background, we can be reasonably certain that the massive promotion of the tax revolt has the backing of American business.

It didn't start out that way. Business interests initially opposed Proposition 13 as an extreme measure that was expected to fail and discredit the tax-reduction movement. Popular support changed the situation. As it edged up to 30 and 40 percent, the mass media suddenly "discovered" the tax revolt and helped push it over the top.

A related media campaign against government corruption, overregulation, and waste has been going on since Watergate. It is a sign that the cozy alliance for

growth between business and government has broken up. While certain kinds of monopolistic regulation have always been appreciated by business, the government has now gone too far. It is getting more and more intimately involved with the conduct of business and is growing uncontrollably. Political methods have not stopped it. The specter of Britain or even Russia looms ahead. Worse, economic collapse due to global energy and credit imbalances could overtake business while it struggles in the bureaucratic web.

The situation calls for extreme measures. Cutting off the government's money supply is one of them. Turning the people against government is another. Both are neatly combined in the tax revolt. Manipulated or not, the people are joining with business against government in a titanic struggle of which we have seen only the opening skirmishes.

There are exciting times ahead. The government can't just be worn down gradually. Its endurance and growth tendency are inherent in every cell. No. The situation must be resolved rapidly if business is to be free to deal with the energy crisis of the '80s. It must be resolved rapidly if the popular momentum is not to be lost. The tax revolt, combined with other strategies in business's arsenal, must knock government right down to a size and structure from which it can never again wield independent power.

The question is, How could this be accomplished?

THE PURSE STRINGS

So long as the federal government fails to balance its budget, it forfeits its financial independence and has to go to the bankers for money. To some minds, the enormous national debt and the continuing deficit of over $50 billion even in good years put the government firmly in the hands of its creditors, who have effective financial control if they wish to exercise it.

We can see how this works in other countries that have found themselves in this position as a result of quadrupled oil bills. The International Monetary Fund generally represents the creditors. In the case of Britain in the sterling crisis of June 1976, Her Majesty's Government was running a deficit of 12 billion pounds and applied to the IMF for the maximum possible loan. The negotiations were intense, with the IMF insisting that the deficit be cut by 30 percent as a condition of the loan.

The British screamed bloody murder. Their government is as resistant to budget cuts as ours. They threatened to cut back on NATO. It didn't do any good. They had to take the deal. They made the cuts, vociferously blaming the IMF for their plight.

The Italians were not so accommodating. In Italy—and in Egypt, Peru, and other countries—bankrupt governments have extorted loans as the price of a precarious political stability. There are regular cost-of-living riots whenever the creditors try to tighten up.

Closer to home we have the example of New York City, the very home of the business establishment. The creditors have leaned on the budget, but not hard enough to make the deficits go away. Could they if they tried? Or do they prefer to maintain the subsidy and the financial control that goes with it?

The case of the federal government is much more urgent and serious and complicated. The OPEC creditors demonstrated last winter that they have ample financial leverage to control US monetary policy. The government can no longer print its way out of debt without destroying the dollar. Now we are waiting for the other shoe to drop: creditor control of fiscal policy. How long before major creditors exact budgetary control as the price of continued deficit financing?

The people are joining with business against government in a titanic struggle.

The larger the deficit, the more leverage there will be for instituting specific reforms—devolution of functions to the states, market-type competition, deregulation, and so on. For any given deficit, however, government spending will fall only as fast as taxes are cut. Hence the importance of the tax revolt.

Not that the government would hold still for all this. We would expect it to withhold services strategically and to mobilize its vast army of dependents to resist the cuts.

Not very smart. That escalates the conflict and gives the balance of power to the people, who can play business and government off against each other. Business would have to neutralize the cuts by taking up public welfare and winning dependents from the government camp. Thus is born the concept of cost-effective, *non-governmental* public welfare.

Ultimately, this government reaction is self-defeating, since withholding services adds strength to the tax revolt. With the appearance of alternatives, the only hope for survival of a given bureau or agency is to compete—assuming it has the flexibility and survival instinct to learn how.

PROMOTING SELF-SUFFICIENCY

In some cases the alternatives will be invisible and virtually costless. The large dependent group known as the unemployed, for instance, can be reduced along with working hours and the minimum wage. Farming out work, employment in the home with the help of improved communications technology, and self-employment would all extend employment opportunities to those who are presently clients of the state, with the bonus of making taxes harder to collect. Spreading work over more people would also reduce the average tax rate.

With the exception of the minimum wage, which will be a knock-down, drag-out political battle, all of these areas are controlled directly by business or can be influenced through the media. Watch for the selling of leisure rather than the high-income lifestyle.

What of the more difficult case—the unemployable? No individual business will want to take them on. How can rehabilitation, training, and support be subsidized if not through a government program such as CETA?

To the business and banking consortium that is financing the government deficit, each dependent removed from the welfare rolls is worth something in hastening the government's demise and returning funds to the private sector. The political and economic benefits can be translated into a sizable sum available to pull somebody out of the dependency trap. How would it be channeled?

On a payment-for-results basis. There is an attractive opportunity here for independent, competitive businesses to invest in training and rehabilitation programs, being reimbursed on the basis of subsequent reductions in their clients' demands on public services. Unlike the existing government agencies, which thrive on the perpetuation of their clients' dependence, these businesses would be competing to discover the most efficient and effective ways to promote self-sufficiency.

There are additional measures business can take to reduce dependency and the need for such agencies. It can do a great deal through the media, marketing efficient low-income lifestyles and providing education for self-sufficiency. This meshes well with the campaign to substitute leisure for consumption and is a dramatic reversal of television's role. It also fits in

with business's conservationist stance, which has been evident since 1973 and is likely to continue through the energy crisis of the '80s.

Of course the lower level of business, the most highly competitive sector, shows no signs of letting up with its "buy, buy, buy!" messages, but the dramatic increase of 30 percent in TV advertising rates in the fall of 1977 marked the entry of the big boys on the scene, with their unfamiliar messages of conservation and support for the free-enterprise system. What they are doing is buying the medium, so essential to their promoting the new orthodoxy and selling the changes to the people. This is good news for television—both for the producers, who stand to make a lot more money, and for the viewers, who will find that the new, anti-commercial, educational slant saves them money and is more pleasant to watch.

New technology -- economical, self-sufficient, decentralized—will come out of the closet to which it was consigned during the era of waste and growth and will further help to reduce the cost of living and extend the options for the dependent classes, and for everybody else.

These are unfamiliar and novel economic concepts that stand orthodox beliefs on their head. What it adds up to is a survival plan for business with interesting fallout and opportunities for the rest of us. The tax revolt is a key event in this plan, and it is already under way. In order to keep it going, government dependency has to be reduced, and business can take a variety of measures to achieve this. The available evidence at this early stage suggests that business interests are indeed implementing some of them. And if they are serious about survival, they will have evaluated all of these ideas and many more besides.

BUSINESS SURVIVAL

Is the business community together enough to look after its interests in this way?

There is no shortage of opportunities. The international oil companies have had State Department blessing to get together on oil pricing strategy since 1971. The international banks tie all business interests together in guiding money flows and investment decisions for the future. Top bankers and financial officials from all over the world are continually meeting to pull the world economy together. We have seen how the IMF is already using discretionary funds to control national governments. Other business "unions" such as Business Roundtable and trade associations exist in abundance. Organizations such as the Advertising Council coordinate business interests in the media. Consulting firms and research institutions assemble a consensus of the best thinking on business policy. Even government, or that part of it that has traditionally existed to serve business, coordinates and facilitates policies for the benefit of business as a whole. Add to this the possibilities of private meetings worldwide and the spur of imminent economic disaster. It all adds up to an integrated operation. If business did not have strategic capability, it would hardly have made it this far through the unstable '70s.

Assuming that business is serious about surviving, we can expect it to get fully behind dependency reduction. It is easy to fan the flames of tax revolt; the dependency reduction that has to go along with it is the difficult task. And the hardest part is getting it started. Progress will be very slow at first, and the economic and political stress very high, as the new ideas and techniques gradually gain a foothold in our socioeconomic structure.

As these techniques begin to take effect, however, a momentum will develop.

The government can no longer print its way out of debt without destroying the dollar.

Less dependency means liberated lives. Less government means less regulation, more economic and personal freedom. Less taxes means more money to spend and to invest in the future. New technology and lower living costs will ease the burden of staying alive. All these changes arriving together will tend to produce an explosive release of human energy, a boom in prosperity and new business opportunities, a sense of release from the chains that were keeping us from the future.

Once we find that reducing government works, we will continue the process with enthusiasm. But there is one more major obstacle to be dealt with.

POLITICAL CURRENCY

One of the factors entering into the tax revolt is the sense of popular power, the power of the individual to say no and see the system respond. As the tax revolt continues, business and government will be competing for voter support, and popular political power will emerge as a determining factor in this revolution. It can be applied for or against business, but that is not the problem. The problem arises if it is applied through the medium of government. Then it's back to square one, with the government extorting taxes to protect the people from business, a process that is well established today in the areas of environmental protection, consumer safety, and so on—serving no one else as much as government itself.

It is necessary to replace this process with direct negotiations. Just as business can negotiate with unions over wages and working conditions, it can negotiate with consumer and environmental groups over their interests, short-circuiting the governmental process.

Unlike unions, these interest groups would not have a monopoly. And their bargaining power would be in the form of political currency.

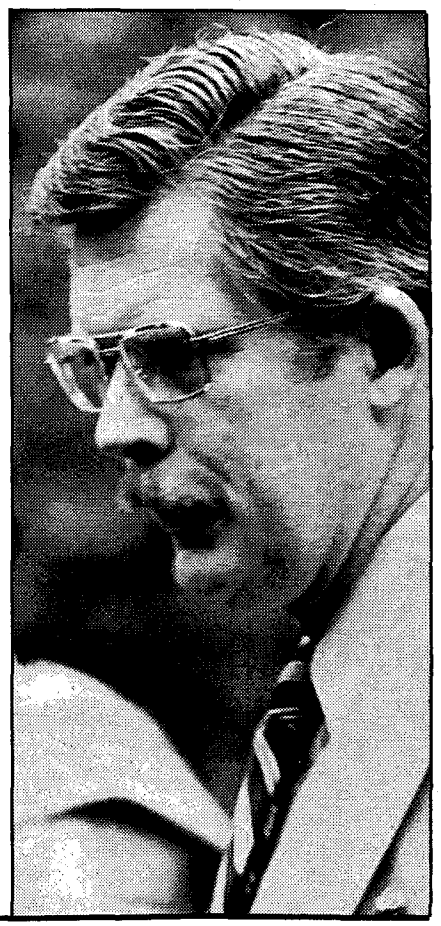
Politicians know all about political currency. They buy and sell and trade on it and make sure that the public never get their hands on it. It starts off as votes, purchased efficiently through the electoral establishment, and is parlayed into the wealth of Washington (see "The Wealth of Washington," *Harper's*, June 1978) and lucrative interventions in the business and financial spheres. The public interest groups that went to Washington in the past 10 years had political currency, derived from their voting membership, to sell. But they fell among thieves. Government took it and turned it into great new agencies, bureaus, and office buildings.

If public interest groups can go directly to business, they can get a better deal. And business can provide an incentive for them to come in the form of financing—something that has been their perennial weakness. The free rider problem is solved if membership is costless. Membership would increase. A sudden expansion of public interest groups and removal of voting power from the disposal of government would result from this simple innovation.

A radical idea? No. Its progenitor already exists. It is called a class action suit. The courts, inefficient as they are, still do a better job of resolving disputes between business and the public than does the legislative-executive monster, and the principle of reimbursement of the costs of the exercise has been established.

This idea can take many forms. Besides the two just mentioned—public interest "unions" and class actions—we might find business courting the electorate by responding to popular grievances before (*Continued on p. 38.*)

The tax revolt goes national: in January a blue-ribbon panel will present Congress with a constitutional amendment to limit federal taxation. A panel member defends its approach. . .



REASON INTERVIEW

WILLIAM NISKANEN

With a background in economics and political studies and experience in the university, the think tank, the government, and the corporation, William Niskanen brings varied skills and insights to the tax-cutting movement. He has been involved in the effort to reduce taxes since 1972, when he helped to draft the unsuccessful Proposition 1 in California. More recently, he has been instrumental in designing the Michigan tax-limitation measure, which will be on the ballot in that state in November, probably along with competing tax-reduction proposals. And now he is working with the National Tax Limitation Committee to draw up a constitutional amendment limiting federal taxation.

Mr. Niskanen moved from an undergraduate education at Harvard to the University of Chicago, where he earned master's and doctorate degrees in economics. He has worked for the Rand Corporation and the Institute for Defense Analysis as well as for the government, in the Defense Department and the Office of

Competition in the public sector is desirable—and for very much the same reasons as it is in the private sector.

Management and Budget. He taught for several years at the Graduate School of Public Policy at the University of California at Berkeley and is the author of Representative Government and Bureaucracy. *Since July 1975 he has been chief economist for a major US corporation.*

At a recent conference in Virginia at which Mr. Niskanen was a featured speaker, Senior Editor Tibor Machan heard of Niskanen's recent efforts in the tax-cutting department. Along with conference participant Lester Hunt, he took Niskanen aside for some of his thoughts on taxes and governments.

REASON: Would you tell us a little bit about the specifics of this bill or document you are working on?

NISKANEN: We have just formed a committee to draft one or more versions of a national tax-limitation amendment to the US Constitution. Several of us have our own recommended versions that we bring to this committee, but the committee has yet to resolve the specific language of the versions that it will endorse. Bob Bork, who was formerly solicitor general of the United States and is now a professor of law at Yale, is the chairman of this drafting committee, and we expect to have one or more versions of such an amendment ready by the end of September.

REASON: There are some other people who are probably known to our readers who are part of this effort.

NISKANEN: Yes, the group includes Milton Friedman, formerly at the University of Chicago and now connected with the Hoover Institution; Walter Williams of Temple University; James Buchanan of the Virginia Polytechnic Institute; and a number of members of the original group associated directly with the National Tax Limitation Committee—Lewis Uhler of California, Professor Craig Stubblebine of the Claremont Colleges.

REASON: Is there any connection with the Jarvis-Gann movement that brought about Proposition 13 in California?

NISKANEN: There's no organizational connection. Several members of our group, most importantly Mr. Friedman, strongly supported the Jarvis-Gann initiative, but that came from a different group and is addressed to a quite different problem than the issue to which a general tax-limitation amendment is addressed. Jarvis-Gann is not a general tax limitation. It limits specific tax rates but does not limit overall taxation, even within the state of California.

REASON: Is it pretty clear that, whatever document emerges from your effort, it will be a tax-limitation provision and not like the one in California?

NISKANEN: We would not attempt to limit any specific tax rate. It would be a general limitation on the total taxing plus borrowing by the federal government. Now the issue as to whether that would be limited in terms of some constant share of the total income in the United States or some formula that would lead to a declining share over time is not yet resolved.

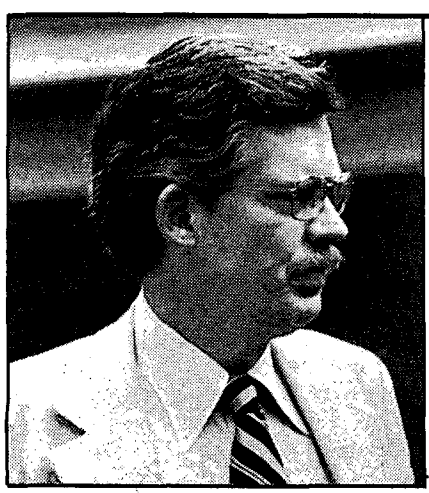
REASON: What do you think are the major and popular objections to this effort—that is, what do you anticipate would be some of the most important political obstacles for you to overcome?

NISKANEN: Well, there are two obvious sources of opposition to the idea of the tax-limitation amendment. One is by the fairly large group of people who want government spending to increase. The other group of people, who may have no strong preferences for outcomes in the sense of either larger government or smaller government, believe that it is inappropriate to constrain elected representatives in this particular manner. They feel that the selection of representatives is the proper basis for electoral or voter control over government.

The primary reason why we believe that the tax-limitation amendment ought to be added to the Constitution is much the same reason as for any other amendment—certain features of the government should not be subject to decisionmaking by the body of elected representatives. The whole spirit of the tax-limitation movement is not necessarily to reduce government or to increase it or whatever but to *shift* one important decision from elected representatives to the people—and that is the share of their income that they are prepared to have government allocate—and to leave to government the entire responsibility for determining the composition of spending and the setting of individual tax rates. The amendments that we have drafted in California and Michigan and that we will be drafting for consideration as a national amendment in no case have constrained the authority of the governments to determine how much money goes to particular purposes or groups within the total budget, nor have they constrained any specific tax rate. It leaves those questions of detail to legislatures, where the process of vote trading, or logrolling, is an important feature in assuring effective representation of minority interests. But on the question of the budget within which the political officials are operating, we feel that that decision should be made by the electorate themselves and not by the elected representatives.

REASON: Are there any constitutional obstacles that you foresee on grounds that this usurps some of the legislators' powers or responsibilities as defined in the Constitution?

NISKANEN: No. The populace, through constitutionally approved procedures for constitutional change, may constrain the legislature and the executive in any way they choose, and that's the case even if one may feel that the amendment has been poorly



Ten cents per American family per year finances a $7 million subsidy.

designed or whatever. Any amendment, of course, must be passed by constitutionally approved procedures, and at the federal level—I think quite appropriately—those procedures are very restrictive.

REASON: Why do you think that the amount of government spending should not be decided by elected representatives?

NISKANEN: Well, there's a fundamental asymmetry in the political process that leads to an overspending bias. Is it primarily a consequence of the fact that political activity itself is costly. Any proposal, for example, which has concentrated benefits but very diffuse costs will be such that the people who bear the cost do not have sufficient incentives to register their concerns through the political authorities or change their votes among candidates on that basis. Any number of subsidy programs or concentrated special-interest programs would be of that character. That's one important, and probably the most important, general bias in this process—the proliferation of special-interest programs with concentrated benefits and diffuse costs. Ten cents per American family per year finances a $7 million subsidy, and if that subsidy only goes to a few people they have an enormous incentive to use the political process to achieve that subsidy, and no one has much concern about opposing it. That's true of all levels of government almost regardless of how the service is supplied. It's true to the extent that the Constitution, either in fact or implicitly, authorizes those types of special-interest programs.

For a long period of time in American history, we took seriously the limitations on federal functions that are spelled out explicitly in Article I, Section 8, and the 10th Amendment, and as long as we took those limitations very seriously, the federal government was constrained in terms of the taxing activities that it could undertake. But beginning primarily in the '60s, there is no longer any effective constraint on the range of functions the federal government may undertake, and that increases the importance of subjecting the federal government to a more aggressive type of constraint. The 10th Amendment, as you remember, says that any program or any function that is not authorized by the Constitution is reserved for the states or the people, so that the presumption was that unless it was specifically authorized they could not do it. The effective constitutional constraint right now is that unless it is specifically *prohibited*, they may do it. That's an enormous change; it's happened in our lifetime.

There are a number of other biases, of course, in governmental decision processes which lead to overspending, one of the more important of them being the incentives of the bureaucrats, or the incentives of the people in the civil service, because their incentives are primarily a function of how much the government spends.

The combination of these several processes, I believe, and many people believe, leads to a greater aggregate level of spending than would be desired or would be approved by the electorate if they had a chance to vote on it directly. Now the test of that, of course, is whether such an amendment will pass when an informed electorate has a chance to vote on it. We have had several experiences to date in which they have not passed. Proposition 1 in California in 1973 did not pass by a narrow margin. A similar proposal in Michigan in 1976 did not pass, nor did another in 1974 in Arizona.

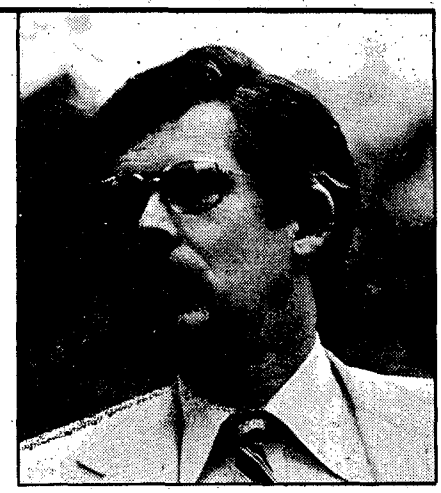
REASON: Is there some campaign effort being made now which, learning from the past, would perhaps incorporate better information dissemination?

NISKANEN: Well, we may have learned something about information dissemination, but I think that's less important than the fact that the electorate has changed in the meantime. The same proposal going before California or Michigan now is likely to be approved in a situation where it wasn't approved some years ago just because the mood of the electorate has changed. Just this year, for example, Tennessee has passed a spending limitation as a constitutional amendment. The state of New Jersey has passed a tax-limitation amendment as a statute. I expect that the proposed constitutional amendment in Michigan will pass this fall. Several of the Democratic legislators in California who opposed Proposition 1 in 1973 have expressed the present belief that they wished it had passed, in part to head off the kind of momentum that developed for Jarvis-Gann.

REASON: Given your present work on tax limitation, perhaps you could tell us a little about your previous scholarly work on the issue of bureaucracy, politicians, and general political processes in this country.

NISKANEN: Well, the primary theme of my scholarly work in the area that is now called *public choice* is that the decisions that are made by public bodies, bureaus, and representative assemblies are likely to be biased relative to the interests of the population unless the underlying guidance of the rules under which they operate—the Constitution—is correctly formulated. The bureaucratic provision of public services is, in a theoretical sense, an anomaly in the contemporary world because we have no theory which justifies the bureaucratic supply of these government services as distinct, in many cases, from just the governmental financing of them. For reasons that are rather complex, in most cases we have chosen to supply government services from government firms or bureaus instead of, for example, using voucher systems to provide for public financing of education or the purchase of other government services from private firms, and so forth. But bureaus operate rather differently from private firms and particularly if they have a monopoly in the provision of a particular good or service. A profit-seeking private monopoly

I expect that the proposed constitutional amendment in Michigan will pass this fall.



will sell too little of a product at too high a price, but a public monopoly, because people cannot collect the bureaucratic profits as direct income, is likely to oversupply the service relative to the interests of even the legislature, let alone the interests of the population.

Now one of the problems of the legislature is that it has to divide up its work among committees, but these committees are, to a substantial extent, self-selective. People who have the greatest interest in a particular governmental activity are those who are most likely to dominate that committee. In my book I call this "the case of the high-demand committee," and there is considerable evidence that those legislators who are most concerned about a particular function, in terms of preferring the highest level of spending for those functions, are the ones who dominate the committees who review those functions. And while the committees have some incentive to correct for, let's say, simple inefficiency of the bureaus in the sense that they would like to get more output for the same amount of money, they do not have much incentive to correct for the oversupply of those services because they have the same kinds of preferences and outcomes—they want more of those services themselves. And one of my recommendations with respect to legislatures is consistent with the sort of recommendations that I make relative to bureaus and that is to reduce the monopoly power of these review committees—for example, by assigning issues across committees to a number of different committees on occasion, or possibly by shifting people around among the committees.

REASON: Do you have some ideas about reforming the bureaus themselves?

NISKANEN: It has always been rather strange to me, and has led me to thinking through these issues in the first place, why there has been a general presumption that competition in the private sector is desirable but that competition in the public sector is undesirable. On thinking that through, I was led to conclude that competition in the public sector is also desirable and for very much the same reasons as it is in the private sector. So I would like to introduce more competition in the public sector by two means—both by increasing the competition among bureaus, providing similar if not identical output, and by increasing the competition between bureaus and private firms. I see no reason, for example, to make an either/or choice between having public schools and having a voucher plan, in that with a voucher plan parents may very well choose to send their children right back to the public schools, in which case I would expect the public schools to be better than they are now relative to the purposes of the parents.

Other actions that can be taken within a bureaucracy that I would favor would be to substantially increase the proportion of people within the bureaucracy who are chosen by patronage rather than by the civil service. I think that the substitution of civil service for patronage in essentially all government jobs has made the civil service an independent force in our community in a way in which their interests are served, not by how well they serve whatever party is in power, but by how big the government is. That substantially reduces the leverage of whoever is elected, whatever party is elected, to run the government. Patronage would increase the responsiveness of the civil servants to the elective authorities.

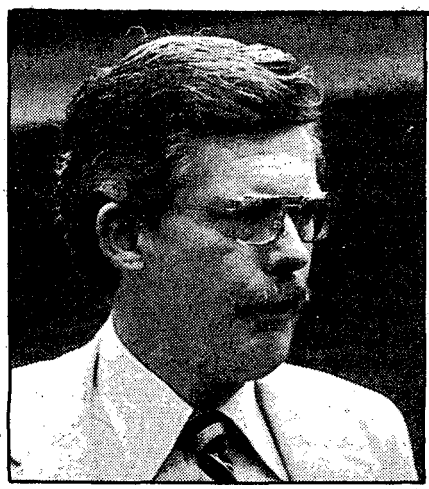
REASON: It seems, to put it roughly, that you would like to make government more efficient, and that may mean that what some of us might call unjust functions of government would be strengthened. And the question arises, Isn't that somehow sacrificing the individuals who are subject to these unjust laws for the sake of some goal, and what is that goal and why ought this trade-off be made?

NISKANEN: Well, a twofold response: one is that my concern in general is to make government more responsive. Efficiency is part of responsiveness but is not the whole of it. Ultimately, of course, we would all like the government to be doing the right things in terms of the interests of the population and the community and not just doing the wrong things at lower cost. I have a personal view, however—which comes less from analytic reasoning than from observation of political behavior—that the issue of whether government should not be doing something is often never forced unless you force the issue of its efficiency. There is a wide range of things that I would prefer the government not to do, but I think realistically an essential part of the political process to change those laws, regulations, programs, is to enforce them, and enforce them generally, and to do them as efficiently as possible so that the issue of whether the government ought to do it is forced and is not confused with the question of arbitrary justice or inefficiency or something.

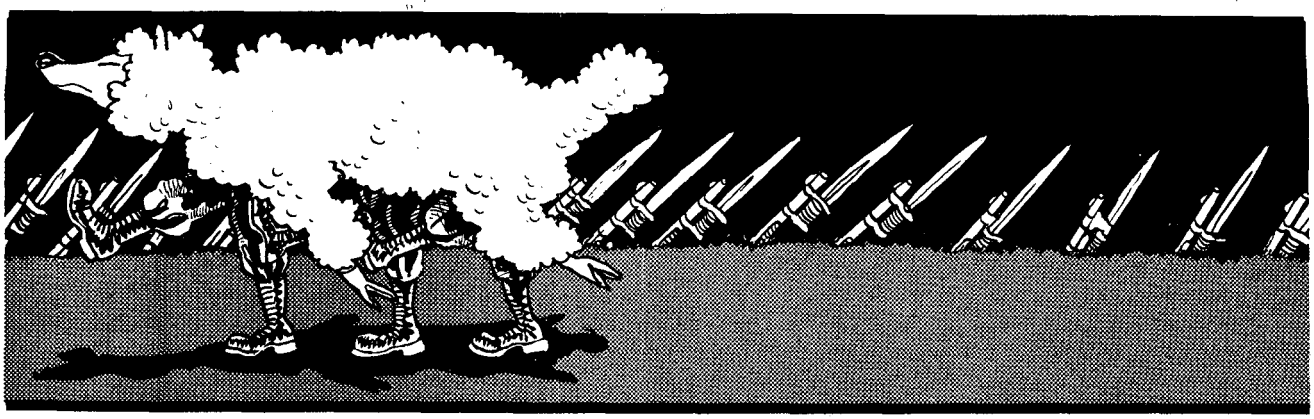
REASON: Your example of the prohibition issue should come in here, I think.

NISKANEN: That's right. The history of the elimination of state prohibition after the federal prohibition amendment was finally repealed is that the repeal of the state prohibition happened only after the governor or the state government chose to enforce the prohibition law on a rather uniform basis. As long as legislators and public men and women could have both their law and their liquor, they maintained that law which they themselves violated. I see no prospect, for example, of eliminating or reducing what I would regard as the oppressive marijuana laws until the sons and daughters of mayors and of governors and of legislators are charged with violations of these laws. I think that enforcing that law is a necessary process for people to sort out whether the law is good or bad.

REASON: Thank you very much, Dr. Niskanen. ◻



There is no longer any effective constraint on the range of functions the federal government may undertake.



S 1 IN SHEEP'S CLOTHING

In the guise of reforming the federal criminal code, this insidious bill creates the complete infrastructure of a totalitarian state.

by Sarah E. Foster

• You are a political activist and the FBI's got your number. You manage to duck one of their agents, who's been following you for days—and that's all they need. You've "used trickery to impair a government function," and you could get up to five years in jail.

• You've refused entrance to the census taker, closing the door in his face—"obstruction of the performance of duty by a public servant" by means of an obstacle. Penalty: up to one year.

• You have "acted in any manner to evade liability for payment of taxes," but it turns out, when the IRS catches up with you, that you have *no* tax liability. You are nevertheless subject to two years.

• You neglected to keep adequate tax records. Penalty: up to one year.

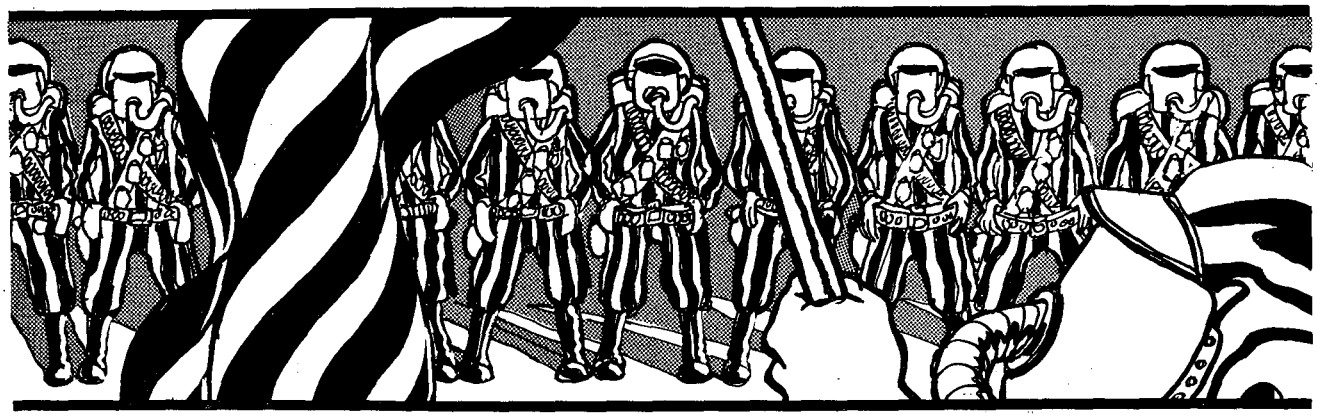
These and other scenarios could be true stories if certain people in Washington have their way.

On January 30, The Criminal Code Reform Act of 1978—S 1437—was approved by the US Senate, 72-15. This is the most thorough consolidation and revision of the criminal code in 200 years—a complete overhauling. Edward Kennedy, one of the cosponsors, called it "the cornerstone of the federal government's law enforcement policy," and Strom Thurmond, who was instrumental in securing what little conservative support there was, hailed its passage with similar metaphor and enthusiasm as a "milestone in American jurisprudence." Considerably less enthusiastic were majority whip "liberal" Alan Cranston and the chairman of the Senate Judiciary Committee in which the bill was heard, "conservative" James Eastland, both of whom voted nay.

SALVAGE OPERATIONS

S 1437 is this year's rewrite of S 1, the omnibus crime bill of 1976, which was never voted out of the Senate Judiciary Committee because of enormous opposition from individuals and groups of all political persuasions—the result of extensive exposure by the media. Like its predecessor, S 1437 is an outgrowth of the attempt begun in 1966 to codify and revise Title 18 of the US Code, "Crimes and Criminal Procedure." At that time Congress established the National Commission on Revision of Federal Criminal Law (the so-called Brown Commission, named from its Chairman, ex-Governor of California Edmund G. Brown). Congress directed the commission to make "a full and complete review and study of statutory and case law... for the purpose of formulating to the Congress legislation which would improve the federal system of justice."

In 1971 President Nixon turned over the commission's recommendations to the Justice Department, with instructions to draw up a new criminal code. Several drafts were developed, not only by the Justice Department, but by the staff of the Senate Judiciary Committee. In 1974 these joined ranks and produced the infamous S 1. After its defeat, salvage operations were begun almost at once, under the leadership of newly appointed Attorney General Griffin Bell, who has made this legislation his special cause and con-



cern. Early last year he set up a task force within the Justice Department. Working closely with Kennedy and, until his death, John McClellan, this task force was able, within a few months, to present Congress with S 1437.

Despite the toning down of certain "controversial" features that were so glaring in S 1 (such as some overt restrictions on the First Amendment), the two bills are very similar in substance and spirit. Widespread protest of the kind that greeted S 1 has been scarce, however, as this second attempt at passage has not received appropriate publicity. The public does not know about S 1437—that it is essentially S 1 with a new number.

Even in its muted form the bill embodies some highly anticonstitutional provisions and, if passed, will have a total, all-encompassing effect on our lives. Senator Cranston realized this and, in a clear, thoughtful statement before the Senate, urged his colleagues to consider carefully its full ramifications: "The Department of Justice wants the bill passed... the Department will have in its grasp a monolithic prosecutorial and investigative jurisdiction capable of reaching virtually every nook and cranny of American life." That is no exaggeration.

According to the cover page, S 1437 is "an Act to codify, revise, and reform Title 18 of the United States Code; *and for other purposes*." Continuing in the first section, "The general purpose of this title is to establish justice *in the context of a federal system*." The implications become obvious on closer reading. Total federalization of law enforcement, from investigation through imprisonment, appears to be the real intent; that will certainly be the result. Alan Cranston warns, "The Criminal Code Reform Act... will tip the delicate balance of police power in our nation too much in the direction of the Federal Government. Americans enjoy unparalleled civil and political freedom partly because our Constitution, in addition to the specific guarantees of the Bill of Rights, does not concentrate police power in any one place. On the contrary, the Constitution deliberately disrupts and makes difficult the consolidation of power." To those who believe the "delicate balance of police power" has already been tipped too far, these times will appear positively halcyon if some of the provisions of S 1437 are put into play.

THE PROBLEM UNTOUCHED

But what of the other purposes—codification, revision, and reform? Aren't these objectives commendable? No, for the fundamental problem is not addressed, let alone solved. That problem is, of course, one of too many laws. Federal law has been growing for two centuries due to the continuous expansion of federal jurisdiction and a steady inflation, to use an analogy, in the supply of laws—laws of all kinds and sizes.

First, there are the statutes, which are laws passed by a legislative body. In order for an action to be punishable as a *criminal* offense it must be identified in a statute. According to the Constitution, only Congress may enact these on the federal level. One of the insidious features of any omnibus bill such as S 1437 is that in one fell swoop it creates many statutes, a number of which might never have been enacted if introduced as separate legislation.

Then there is case law—interpretations of statutes and judges' decisions in response to specific cases, which serve as precedents for future rulings. These may, at some point, be overturned by other judges. They become statutory only by being passed as an act or part of an act by a legislative body.

Lastly, there are the edicts propounded by the regulatory agencies, which exist and flourish within the executive branch but owe their existence to the legislative. They are under congressional mandate to make whatever regulations might be considered necessary to implement the programs for which they were created. While these regulations are not statutory and thus are not laws in the strict sense, violation of any is punishable by fine or imprisonment. There are now 87 regulatory departments and agencies, with more on the horizon. So many regulations are being ground out, it is necessary to publish them *daily* in the *Federal Register.*

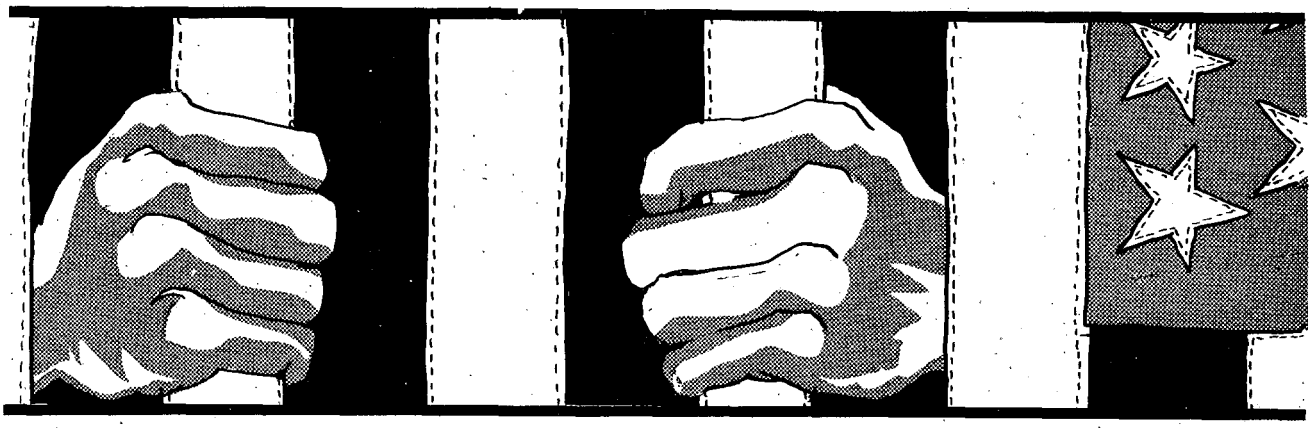
It is impossible to estimate the staggering number of statutes plus regulations plus case laws. The result of this extensive law making has been, predictably enough, complete confusion. The 10th Amendment notwithstanding, disputes frequently arise over whether an offense is even under federal rather than state jurisdiction. The same "regulatory offense" may be under the auspices of several agencies but with the penalty for violation varying from one to the other; the defendant and his alleged misdeed are often wrestled back and forth as a bone among dogs.

This is nothing new, nor is the attempt to straighten up the mess through codificatin and revision. The first effort, begun in 1866, produced the Revised Statutes of 1877. S 1437 is a revision of Title 18 of the US Code, which was enacted in 1948. Title 18 is based, in turn, on the Penal Code of 1909, a major revision, more thorough than the earlier one of 1877.

Most critics of S 1437, even those outspoken against it, favor some reform of the criminal code and urge its simplification. They overlook the cause of the problem, however, and thus miss the solution. The only way to simplify, to bring order from the chaos, is to limit the authority of those in government to make and enforce laws and to cut down on the existing supply by rigorously repealing a good percentage of those on the books.

Actually, one thing any penal code revision is supposed to do, and usually does, is to throw out a certain amount of dead wood. Indeed, S 1437 has *some* repeals—it will no longer be an offense to seduce a woman on a train or to interfere with the flight of a carrier pigeon. Of course, S 1437 would also effectively repeal several constitutional amendments, although that is not mentioned by its backers.

As for codification, in the past it has been largely that—classification of existing laws, the development of a filing system. This time it is different and more than merely a matter of organization. The



bill is large—there are 682 pages, half of them appendix, and over 3,000 statutes, many of which are new. A piece of legislation of that magnitude is frightening enough, but size is the least of the objections to it. It actually is a shortening of the criminal code, but at heavy cost. Many laws are grouped into broad categories, with a consequent blurring of outline and loss of precise definition. Also, federal jurisdiction, which has always been an integral element of the definition of an offense, is removed from the definition.

The collapsing of laws into generalized categories to solve the difficulties arising from there being too many laws in the first place may be compared—by the monetary analogy—to the devaluation of currency to solve the problems of inflation. It doesn't really work and ultimately does a great deal of damage. All that is accomplished is the construction of another base upon which to begin again a proliferation either of paper money, or, as here, of laws. And there is another factor to be considered—an extremely crucial one to which Alan Cranston tried to direct the attention of the Senate. He noted that in the process of making new, general offenses from many specific ones, "*the new offense becomes greater than the sum of its parts.*" He added, "I am not satisfied that the work done to date on the bill has adequately assessed the impact of these new offenses on conduct not previously within the effective scope of present criminal law."

FEDERALIZATION

It would appear, however, that the persons who put together S 1437 were all too aware of "the impact of these new offenses." Just in case the technique of consolidation was not totally effective in extending federal jurisdiction, they devised another process, a particularly pernicious one, to ensure that end—so-called piggybacking. This has met with opposition but has been retained in many parts of the bill; as might be expected, the Senate Judiciary Committee regards it as one of the great contributions of the new code.

"Piggybacking" is a method for providing unchallenged federalization of law enforcement and is inextricably woven through all the offense statutes. If, during the commission of a crime, other crimes are committed and any of these is a federal offense, it is likely that all could be placed under federal jurisdiction. Murder, arson, theft, robbery, and many other "offenses involving the person" and property become federal offenses if committed in conjunction with various elsewhere-defined federal crimes.

There is not much discussion these days about "usurpation of local authority" by federal, but that is what we are faced with here. Crimes formerly prosecuted in city, county, or state courts would be transferred to federal ones. The federal case load would jump from 40,000 a year, which is bad enough, to 180,000—and that is a conservative estimate. Others place the figure well over 220,000. According to Professor John Quigley of the Ohio State Law School, robbery cases alone would total *150,000 in one year.*

Now, even with federal jurisdiction drawn so broadly, there are still bound to be disputes over appropriate jurisdiction. Who is to make the final decision as to whether a particular crime should be tried locally or not? In current procedure, the question of jurisdiction has been linked with the definition of the crime, and the prosecutor is responsible for demonstrating to the jury whether the alleged offense is in fact federal. The jury considers this as part of the charge. S 1437 severs this link, and it will be the judge—a federal judge—who has the last word in any argument concerning jurisdiction.

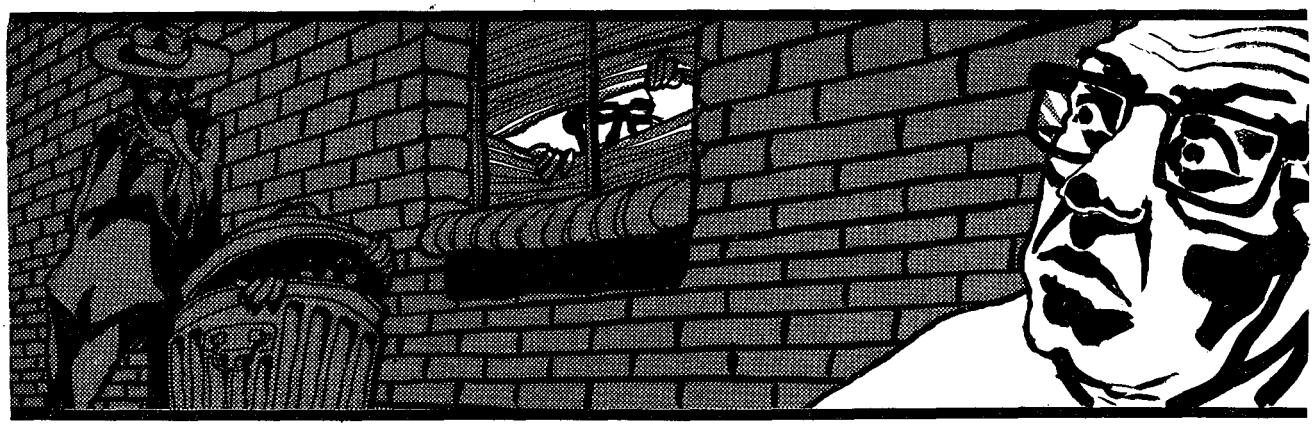
Strom Thurmond, just before the Senate vote, proudly summed it up in what was, no doubt, a "ringing" address:

> For 200 years we have had, at the Federal level, an inadequate and outdated criminal code. For 11 years a massive effort has been underway to correct this situation. . . . the result of this effort has been a bill which provides law enforcement officials with *powerful new tools* to combat criminal elements. Instead of crimes being defined in terms of the Federal jurisdiction, they are defined in common law terms. The old system proving Federal jurisdiction was *confusing to juries and an unnecessary obstruction to prosecutors.* S. 1437 is a great improvement. [emphasis added]

What has happened to the doctrine of "separation of powers"? What about "states' rights" and "rights reserved to the people"? Strom Thurmond has come a long way since he and the South Carolina delegation stormed out of the 1948 Democratic Convention and founded the States' Rights Democratic Party. Back then he talked about the evils of centralized government and its intrusion into our lives. Now he claims that we have had an inadequate code that has hampered the feds. And those "criminal elements" he is talking about include not only your unfriendly neighborhood mugger but the uncooperative businessman, the recalcitrant tax evader and protester, the political activist, the draft resister.

It is necessary to examine closely the tools that Senator Thurmond hopes will be used against us. Besides the general feder-

The House counterpart of S 1437 is the almost-identical HR 6869. But when it went to the House Subcommittee on Criminal Justice for consideration, both it and S 1437 were in effect dumped in the wastebasket. Instead of working with these, the subcommittee simply deleted archaic laws from the existing US Code (Title 18) and reorganized its statutes for reference convenience —with none of the ill-defined "consolidation" or added statutes of S 1437. The subcommittee's work now goes before the House, having gained the support of Peter Rodino, chairman of the full House Judiciary Committee. If it passes, though, watch for its "restoration" in the Conference Committee.



alization of enforcement, some new statutes have been drafted, and old ones refurbished, to make things really tight. The most significant are probably those found in Chapters 10 and 13, "Offenses of General Applicability" and "Offenses Involving Government Processes."

BEFORE THE FACT

Chapter 10 (and Section 401) describes "inchoate offenses"—conduct that takes place *before* the commission of a crime and is punishable in itself. Considering the type of conduct declared criminal by S 1437, these statutes will have a stultifying effect not only on attempts to rectify impossible social and political situations but on any effort to resist, or simply avoid, harassment by government agents and other public servants. They will destroy our rights of free speech and free association.

Criminal Attempt. This is a new statute at the federal level. It will be an offense to take "a substantial step toward the commission of the crime." The penalty for "attempt" is the same as for the projected crime, whatever that happens to be (except for Class A felonies) and whether or not the intended offense is carried out. Exactly what constitutes a substantial step is left open and undefined, with the only defense being to prove that you have made a "voluntary and complete" renunciation of your intentions and have taken "affirmative steps that prevented the commission of the crime." Moreover, if the crime attempted was in fact completed, a judge will be able to double the penalty for virtually any crime if the prosecution decides to add criminal attempt to the list of charges a defendant must face.

Criminal Conspiracy. This is not a new offense, although this version of the statute is broader than similar statutes in the past and will make it simpler for officials to involve a number of persons and for prosecutors to demonstrate that there has been a conspiracy. It will be an offense to "agree" with one or more persons to engage in conduct constituting a crime or crimes if "he, or one of such persons in fact, engages in any conduct with intent to effect any objective of the agreement." The penalty for "agreeing" is, as with criminal attempt, the same as for the planned crime itself. Thus a number of persons (fellow travelers?), no matter how far out on the periphery, can be held culpable for the plans and conduct of those at the center of action. Think about that next time you plan a tax revolt.

Liability of an Accomplice. In this section, a general offense of complicity is established. A person will be "criminally liable for an offense based upon the conduct of another person" if "he knowingly aids or abets the commission of the offense by the other person." Since *abet* is elsewhere defined to include "induce," as well as "procure" and "command," this section on liability and complicity is linked with criminal conspiracy and criminal solicitation, the most potentially repressive of the inchoate offenses.

Criminal Solicitation. Like criminal attempt, this is a new offense. A person is guilty if he "commands, entreats, induces *or otherwise endeavors to persuade*" another to engage in conduct constituting a crime. This grabs at the First Amendment and rips it apart. Any encouragement of civil disobedience—whether it occurs in a meeting hall, your living room, or in the pages of a magazine or newspaper—becomes a federal crime. The penalty is one grade lower than for that of the crime solicited—which could include urging others not to file their 1040s ("disregarding a tax obligation) or suggesting to a group of factory owners that they refuse OSHA inspector admittance to their plants ("obstructing a government function by physical interference").

PROTECTING GOVERNMENT

Obstructing a government function is one of several proposed statutes embodied in Chapter 13, "Offenses Involving Government Processes." They are designed to enable governmental operations to be carried out utterly unimpeded. Vast blanket powers are given to regulatory agency personnel and other "public servants." "Public servant" covers anyone on the payroll—"an officer, employee, adviser, consultant, juror, or other person authorized to act for or on behalf of a government or serving a government in a civil or military capacity." Not only are these people granted extraordinary powers in their official roles; they are set apart as members of a specially protected class of citizens. Understandably, this chapter is regarded as one of the most controversial parts of S 1437.

Obstructing a Government Function by Fraud. This one is such a serious matter that it can net an offender up to five years in prison. It will be a felony (Class D) to *intentionally* obstruct or impair a government function "by defrauding the government through misrepresentation, chicanery, trickery, deceit, craft, overreaching, or other dishonest means." Prof. Thomas I. Emerson, Emeritus, of Yale University, says about this section: "A person could commit it by giving a postman the wrong directions to a house. A businessman would be guilty if he engaged in some deception in fulfilling a government contract. Or a political activist might be in violation if he used a trick to avoid surveillance by an FBI agent. There is no justification for such an amorphous offense."

Obstructing a Government Function by Physical Interference. The sister to the above statute, this makes it criminal to obstruct "the performance by a public servant" or "by an inspector of a specific duty imposed by a statute, or by a regulation, rule or order" by means of an obstacle or other physical interference. Federal jurisdiction extends to interference with state or local officials operating under federally funded programs. Telling a city social worker to stay out—and closing the door on him—could be a federal crime.

This is also one of those statutes for which the penalty is compounded if death, arson, etc., occurs in conjunction with it and through which federal jurisdiction is established over these latter offenses. But apart from the piggybacking

aspects, its basic penalty grading is of interest. If just one person is doing the obstructing (you have refused entrance to a census taker) it is a Class A misdemeanor, with a maximum penalty of a year in jail. But it is merely an infraction, with a five-day sentence at the most, if you are part of a group that is demonstrating, as long as this picketing doesn't "significantly obstruct or impair a government function."

Any false statement to a government official becomes prosecutable, even if the offender was not under oath.

Even should a riot occur, engaging in it is only a Class B misdemeanor, carrying a six-month sentence.

Much of the concern about S 1437 has been over the possibility that the government will be able to clamp down on large demonstrations and other kinds of political activism. This concern is certainly justified, but repression of individuals could be even greater and seems, upon analysis, to be more likely. The government evidently feels more threatened by the ordinary citizen who is filling out a tax form than by the actions of any group. The motivation behind a good part of S 1437, and perfectly exemplified in Chapter 13, seems to be a fear on the part of those in authority that every person is, in his own way, trying to put one over on the government—and *this must not be allowed to continue.* The penalties for the actions of the individual-on-his-own are set, therefore, appreciably higher than for those of the individual-within-a-group.

Making a False Statement. "A person is guilty . . . if he knowingly makes a false oral statement to a person he knows is a law enforcement officer or a person assigned a non-criminal investigative responsibility by statute, . . . regulation, rule or order." Other forms of false statement, such as those in writing, are covered by this statute, but this is the most pernicious part. Imagine the power it gives to investigators of the FBI, DEA, IRS, and all those agencies. Bear in mind who the criminals are—the girl who tells an FBI agent that her lover, who has left for Canada, has not been at her place all evening; the Chicano citizen who lies to an immigration official over the whereabouts of a friend, an "illegal alien"; the trucker who lies to a DOT inspector in order to avoid fines for "deadheading"—these are the crooks who must be brought to justice. They menace the system more than a rioting mob—a SWAT team can take care of them. This section, on the other hand, is designed to deal with more sinister types.

With the new statutes and greater jurisdiction, a national police force is going to be necessary.

Any falsehood becomes prosecutable, even if the offender was not under oath *nor the action witnessed by counsel or other third party.* Anything you say, therefore, can later be used in evidence against you. The grading is high and the penalty stiff. It's a Class E felony—two years. The rationale given for this section is that the existing federal statute has been subject to conflicting interpretations and is of limited applicability.

Demonstrating to Influence a Judicial Proceeding. It would be an offense to demonstrate within 100 feet of a court of the United States (which includes tax courts) during a hearing or trial. This has been soundly and rightly criticized by civil liberties groups as being an unconstitutional infringement on the rights of free speech and free assembly and an unwarranted shielding of the judiciary from public opinion. Additional objections are that the federal government should have no jurisdiction over what goes on outside a courthouse—federal or otherwise—and that crowd control, and the prosecution for any violence that might arise, should be a local responsibility.

Tampering With a Public Servant and *Retaliating Against a Public Servant.* These sections provide special protections for government employees. It is a felony (Class D) to use "force, threat, intimidation, *or deception* with intent to influence a public servant in his duties." One is also guilty of a felony (same grading) if he actually harms a public servant or damages his property, either in retaliation or "because of the status of a person as a public servant." *Busting the windows of a neighborhood narc or beating up inspectors* is reprehensible, but it is not right that an offense against them is subject to a higher penalty than if committed against any other citizen.

THE PUBLIC ORDER

Besides the chapters on inchoate offenses and offenses involving government processes, other chapters have odious sections on IRS offenses, draft evasion offenses, and victimless crimes.

Tax Evasion. A person is guilty if he "understates a tax," "conceals an asset," or "acts in any manner to evade liability for payment." Penalties are hard. It is a Class C felony (ten years in jail) if liability is over $100,000 and a Class D if it is less than that amount. *Even if no liability is involved it is a Class E felony!* And you had better keep records. Section 7203 in the Appendix states it is a Class A misdemeanor if you fail to do so. At present, tax matters are found in Title 26 of the US Code—and many attorneys argue that that is where they should stay. The wisdom of bringing these into the title dealing with criminal offenses is highly dubious.

Draft Evasion. Failure to register or report for the draft (or alternative civilian service) varies in grading and corresponding penalty from being a Class D felony to a Class A misdemeanor, according to whether or not this occurs during time of war. It is also a Class D felony to obstruct or hinder recruitment during time of war. This includes "inciting" others to refuse to register. One problem—*with twelve pages of definitions,* neither the sponsors, the committees, nor the Senate were able to come up with a definition of *war* or *time of war* that was satisfactory to everyone. So it has been left to the courts to decide later. Korea? Vietnam? Africa?

No wonder Griffin Bell wants this bill—the attorney general would become a super chief-of-police.

Chapter 18, "Offenses Involving Public Order, Safety, Health, and Welfare," includes most of the offenses regarded as victimless crimes: obscenity (pornography), prostitution, gambling, and the use of drugs. These are grouped with riot offenses, organized crime offenses, environmental pollution, and public health offenses. It's a catch-all chapter.

Drug Offenses. This subchapter is largely derived from the Drug Abuse Prevention and Control Act of 1970. It could be worse. If you are caught with less than 30 grams of marijuana, it is an infraction, with no imprisonment. There is a scale of fines for possession of amounts above that. You still may not "deal." Opiates are in a separate section, one of only two sections in the entire code providing for *mandatory* prison sentences. The minimum for trafficking in an opiate is two years. (The other section, Using a Weapon in the Course of a Crime, provides for mandatory two-year imprisonment for

(*Continued on p. 38.*)

OSHA and Search Warrants

One Step Forward, Two Steps Back

by Bernard Siegan

UNLIKE THE SYSTEM in this country, British courts have no power to overrule laws passed by Parliament. Any statute enacted by that body is absolutely binding on the judiciary. An oft-quoted aphorism is that "Parliament can do anything except make a man a woman, or a woman a man." Many, if not most, countries in the world that have constitutions, likewise do not limit the power of their legislatures.

The special powers our Constitution grants courts is intended in large part to protect the liberties of the people from being violated by the executive and legislative branches of government. This is a fundamental mission of the US Supreme Court. Clearly, the framers of our Constitution were not very trusting of lawmakers. A recent case involving the Occupational Safety and Health Administration (OSHA) makes one wonder how conscious the justices sometimes are of their constitutional responsibilities. I will explain what I mean by first summarizing this case.

Bill Barlow is the president and general manager of Barlow's, Inc., an electrical and plumbing installation business in Pocatello, Idaho. In September 1975 an OSHA inspector entered the customer area and, after showing his credentials, informed Barlow that he wished to conduct a search of the working areas of the business. Barlow inquired whether any complaint had been received about his company. "No," replied the inspector, but Barlow's had simply turned up in the agency's selection process.

Barlow asked the inspector if he had a search warrant, and upon learning that he did not, refused admission to the employee area. Barlow insisted he was relying on his rights as guaranteed by the US Constitution's Fourth Amendment, which provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

By a vote of 6-3, the Supreme Court last May upheld Barlow to the extent of agreeing that the Fourth Amendment requires a search warrant. But the Court set forth rules that would allow such a warrant to be obtained even though there was no probable cause that the owner was violating OSHA. The government could acquire a warrant from a court merely by showing that a business had been chosen for search on the basis of a general and nondiscriminatory administrative plan for the enforcement of the law.

Unlike the traditional warrant requirements for searching homes and businesses, an OSHA warrant will not protect employers against search when the government has no reason to suspect a crime is being committed. The decision, however, may prevent harassment inspections directed at particular employers. The government will also have to draft inspection programs in forms presentable to courts, and this should temper somewhat the zeal of the enforcers.

Justice Byron White wrote the majority opinion, and much of it reads like an apology to the secretary of labor for the relatively slight inconveniences the ruling will cause his department. The dissenters' views were presented by Justice John Paul Stevens, and he was even more considerate of OSHA. The dissent favored the government's position to continue with warrantless searches. Stevens asserted the requirements established by the majority provided so little protection for employers that they are not worth the additional cost to the government.

The opinions do mention the history of the Fourth Amendment, which apparently was adopted to prevent the kind of indiscriminate searches the British conducted in colonial days. But each opinion is painfully devoid of any effort to present and analyze the perspectives and interests of businessmen who have done no wrong, yet have to submit their property to search by the government. In a society committed to private property and individual privacy, every person who obeys the laws is entitled to view his home or business as his castle, impenetrable to the police.

Justices who are more concerned about the power of government than the freedom of the individual have relinquished their mission under the Constitution. Justices are not government agents, promoting interests of the executive and legislative branches. Thousands of people and millions of dollars are already devoted to this cause.

The Supreme Court is the branch to which those who are adversely affected by legislation must look for relief. The justices should be vitally concerned about the time, money, and discomfort OSHA inspections will cause Barlow's and other employers. They should direct their energies and talents to protecting individuals against the loss of freedom caused by OSHA.

This is why we have a Supreme Court and grant it enormous power over lawmakers and law enforcers. ◻

More Than Symbolic?

Idaho's Rep. George Hansen, chairman of the American Conservative Union's "Stop OSHA" campaign, contends that the Supreme Court's OSHA decision was not merely a symbolic victory for opponents of government regulation. While the Court rejected the idea that inspection agencies need to show probable cause in the criminal sense in order to obtain a search warrant, it maintained the need for showing *reasonable* cause. According to Hansen's commentary in *Citizens for the Republic Newsletter*, this means that "the government—contrary to most published interpretations—will need to show some *particularity* for an inspection of a private business."

This favorable interpretation is subscribed to by John Runft, lawyer for the Idaho businessman who refused entry to OSHA inspectors and brought the Supreme Court suit. That OSHA must show facts about the particular establishment, and not just about an industry, is also the basis of a warrant challenge now before a federal appeals court in Massachusetts. If OSHA loses this case, perhaps more employers will seek or challenge search warrants. According to a *Wall Street Journal* report, in the first six weeks after the Court's May 23 ruling, warrants were demanded by only 1.5 percent of the employers (291 out of the 18,925) approached by inspectors from OSHA or OSHA-approved state programs.

—M.Z.

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Brownlee

(Continued from p. 27.)

the government can exploit them. Arbitration agencies may arise to mediate disputes and bypass the judicial branch of government. Free markets in political currency could arise, cutting out the machinations in Washington. Computers and telecommunications could decentralize the political process and make a form of continuous direct democracy possible. Voter needs and attitudes, properly collected, interpreted, and marketed, could be translated into appropriate public and individual benefits without empowering a government monopoly along the way.

The possibilities are vast. The only government monopoly that emerges intact from this process is that which maintains the constitutional and legal framework. This is the source of the people's voting power and political currency, and they would do well to preserve it.

All these weapons against government—the tax revolt, control of the media, financial control, reduction of dependency by various means, and, finally, nongovernmental politics—form an impressive array. If they are all applied at once, government growth can be reversed, its dominance broken.

After that, the momentum of success can lead to the fulfilling of libertarian goals and, incidentally, those of many other humanist, progressive, liberal, left-wing, and right-wing groups. It's an all-win solution—all, that is, except those who derive their happiness from wielding State power.

From this perspective we can recognize the tax revolt as the start of something big, the start of a whole new era. A high-technology, self-governing society would represent a new phase in the evolution of mankind. In California, 1978, we took the first step in this transformation. Can we go the rest of the way? ◻

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Foster

(Continued from p. 36.)

the commission of violent crimes in which firearms are used. The singling out of these two offenses reflect the current hysteria over drugs and guns.)

Gambling, Obscenity and Prostitution Offenses. The most hotly debated section in the code was this one—specifically, the statute on obscenity. It is also the only funny one, albeit unintentionally. A *prescription* from a psychiatrist, psychologist, or medical practitioner is required in order to obtain material appealing to one's "prurient interests." It would be a federal offense to disseminate, by mail or mass media, material that appeals to "the prurient interest of the average person applying contemporary community standards." This is the first time a federal obscenity statute based on "community standards" would be enacted. It makes publishers and distributors liable to criminal prosecution in any city with stricter standards than prevail nationally.

Violating State or Local Law in an Enclave. This little section, tucked away at the end of the subchapter, would make every offense under a local "morals law" a federal crime if it is committed on what is generally known as "federal property." Gambling, prostitution, obscenity, and countless other crimes that are not necessarily federal crimes become subject to federal enforcement. The piggybacking potential is enormous.

This survey of offenses, while touching on the most repressive, is by no means exhaustive. There are other features of the bill, however, that are as horrendous—maybe more so.

CRACKING DOWN

With the new statutes and greater areas of jurisdiction, a national police force is going to be necessary. The bill creates one, by extending enormous investigative and arrest powers to agents of the FBI, DEA, Treasury Department, and US Marshals Service. These may 1) carry a firearm; 2) execute orders, issue warrants, etc.; 3) make arrests without warrant for offenses committed in their presence or for felonies *suspected* of being committed outside their presence; 4) pay for services and information; and 5) "*perform any other law enforcement duty that the Attorney General may designate.*" No wonder Griffin Bell wants this bill—the attorney general would become a super chief-of-police.

Accused persons have been denied their rights at both state and federal levels for a number of years now via incarceration in a mental hospital on the grounds that the accused is "mentally unfit" to stand trial. "Offenders with Mental Disease or Defect" details this circumvention of the Sixth Amendment. "At any time after the commencement of a prosecution, *and prior to sentencing*... the attorney for the government may file a motion for a hearing to determine the mental competency of the defendant." The period of observation can last up to 15 days, whereupon the trial or sentencing resumes—unless he is judged "incompetent." Then he can be put away for a longer time, *to undergo mandatory treatment.* Since this can be done even after the verdict is in, it provides a marvelously effective way for the court to hold a person indefinitely. If a defendant is found guilty by a jury, and the maximum penalty for his crime is only a year-long sentence, the court may reopen the case on the grounds of mental incompetence. If you're a tax evader, try convincing a judge that you consider nonfiling a moral imperative.

In view of the above, it is ironic that one of the supposed achievements of S 1437 is the establishing of fixed penalties and the elimination of indeterminate sentences. The sentencing sections involve major changes in the judicial system. The idea of fixed sentences is not objectionable, but these are very high—and often for actions that should not be considered criminal, such as victimless crimes. A major objective of the bill was to achieve uniformity in sentencing. This has not been accomplished, the matter having been delegated to a Sentencing Commission that is to be established in the judiciary branch. It is to be composed of seven members, appointed by the president, and is to develop guidelines for determining whether convicted persons should be imprisoned, fined, or placed on probation. It is also to ascertain appropriate lengths of sentence, within the grading boundaries laid down by S 1437. As Professor Emerson notes, "These guidelines become effective without further action by Congress. Obviously the guidelines become the crucial structure for determining sentencing policy and practice. But there is no way of knowing what the Commission will do.... This is an abdication of Congressional responsibility."

New statutes, provisions for a national police force, abrogation of the Constitution, and a Sentencing Commission that is beholden to no one—S 1437 is *not* just another big step down the road toward a totalitarian State, like so many others already taken; *it is the complete infrastructure of such a State.* If it is passed, we will have arrived, and there can be no going back, no living in the interstices of a collapsing society, no way to ignore the State in a vain hope that it will ignore you. ◻

Ms. Foster's background is in anthropology, on which she has spoken before various professional associations. She is currently starting her own business, a research service.

viewpoint

Alan Reynolds

Of the 6.2 percent unemployment rate in July, only 2.5 percent was due to being laid off or fired. The rest of the unemployed had either quit their jobs (0.9 percent) or had not had a job before or at least not in some time (2.8 percent). This raises the question of whether concern about unemployment means trying to prevent employers from discharging people, to prevent employees from quitting, or to prevent housewives and teenagers from seeking occasional, often part-time, employment.

If we make it difficult or costly for employers to discharge incompetent or lazy people or to temporarily lay off some when bankruptcy is imminent, then we also make employers reluctant to hire those with anything but the best credentials and work records. This is not a promising way of helping young high-school dropouts.

If the idea is to minimize unemployment by making it hard to quit, we could adopt the Soviet Union's technique of making such voluntary unemployment a crime ("parasitism") punishable by a year of prison. That seems a bit harsh.

If we instead want to dampen the work aspirations of housewives and students, who added a couple of million to the ranks of job seekers last year, there are numerous tested devices that could do the job. One of the best is to throw the economy into a recession, which discourages people from even trying to find a job. Another is to draft teenagers and send them into battle—that gets them out of the civilian labor force and therefore out of the unemployment statistics. Again, the cure seems worse than the disease.

The point of all this is that we shouldn't make a fetish out of "the" unemployment measure. No single unemployment rate provides a very good measure of economic distress or opportunity. The fact that the economy has added nine million jobs in three years (almost all in the private sector) is more revealing. The fact that both "help wanted" advertising and the proportion of the population that is employed (58.6 percent) are at postwar peaks is better still.

Unemployment rates try to capture a moving picture with a still camera and thus hide the enormous flow of people in and out of jobs, job seeking, household work, and school. People in those demographic groups with the least job stability may experience several brief periods of unemployment in a single year. Teenage unemployment, for example, has been averaging 16-17 percent in any given month, but half of those teenage unemployed have been unemployed for less than a month. So the teenage unemployed in one month are a largely different group of people from those unemployed a month later.

People also differ in the intensity with which they seek work and on what terms they are willing to accept jobs. We have to look at the specific details of the demand for jobs and not just at the total supply of job offers. A Labor Department survey in May 1976 found that although two-thirds of the unemployed had little or no work experience, 45 percent were unwilling to consider employment at less than $3 an hour. Moreover, the unemployed spent an average of 17 hours a week looking for work, and 41 percent did not look farther than 10 miles from home.

A private survey, by Louis Bolce and Susan Gray of Fordham University, found that 37 percent of the sampled unemployed in New York City chose to remain out of work because they could not find a type of job that suited their skills and interest. That is a luxury provided by transfers of income from the working population. And there is considerable evidence that providing larger tax-free unemployment benefits to more people for longer periods of time has extended the duration of unemployment; it has also subsidized irregular employers at the (payroll-tax) expense of those who provide stable jobs.

While there are always many specific problems in getting jobs and people together, there is only one overall unemployment problem—namely, recession. The only way to avoid recession, however, is to avoid the sort of acceleration of inflation that shifts investment from productive purposes to speculation and hedging and creates the excessive and unbalanced inventory building that invariably ends in collapse. The fourth year of an expansion is no time to be seriously planning Treasury borrowing of at least $61 billion to cover federal budget and off-budget deficits. And the acceleration of money growth, from 5.7 percent in 1976 to 7.8 percent in 1977, was bound to do what it did—raise consumer inflation from 4.8 percent to 6.8 percent, with more to come.

So-called "expansionary" fiscal policy is death to a mature expansion. People take their savings out of mortgage-lending institutions and corporate stocks and bonds in order to buy the new flood of Treasury bills. Housing and business investment grind to a halt. If the Federal Reserve tries to "accommodate" competing public and private credit needs, we just get more inflation and a subsequent recession.

Public service jobs are equally inappropriate as a long-term program. One person's "right to a job" necessarily implies somebody else's obligation to pay his salary. Whether the government pays for public service jobs with taxes, borrowing, or printing money, the result is that private purchasing power and employment must shrink.

Federal grants to cities with high unemployment rates have several difficulties: local unemployment data are very inaccurate; scarcity of job opportunities may be reflected in population loss rather than unemployment; and federal subsidies might delay action in correcting job-destroying local policies (steep taxes, restrictive building codes, etc.).

Protection against imports raises prices, thus reducing real incomes and the related employment. And it reduces the U.S. demand for foreign currencies, thus keeping the dollar artificially overvalued and hurting employment in our export industries.

All of this may sound rather negative, but avoiding error is probably the most constructive thing that could be done. The 1974-75 experience, for example, *(Continued on p. 48.)*

taxes

Unifying the Tax Movement

Tax revolts are nothing new in American history. They've been with us since before the American Revolution, when patriots dumped tea into Boston Harbor in 1773. Today, identifiable antitax movements are sweeping through more than 40 states.

The difference between our current rebellion and those past is that it's hard to believe things could have gotten as bad as they have. Today government in the United States annually seizes over 42 percent of the wealth of its people. Each year, we all work into the month of June *just to pay taxes.* What could possibly have gone so wrong?

Increasing numbers of people are looking at this question, as economic difficulties engulf our society. One particularly cogent analysis is put forth by Prof. James M. Buchanan and Richard E. Wagner in *Democracy in Deficit* (Academic Press, 1977). The authors postulate an unwritten "fiscal constitution" of the past, which stipulated that politicians and other public officers would act responsibly in the sphere of public finance, not running up huge and repeated budget deficits.

Needless to say, the coming of full-force Keynesian economics to the political sphere forced a breakdown in the tacit agreement. Since Kennedy took office in 1960, only one federal budget has been balanced.

The breakdown has been aided by increasingly militant public employees and droves of special-interest "spending constituencies" concerned only with maximizing their own rewards. Both types of groups have applied tremendous pressure on politicians for more spending. The politicians, eager to find, cultivate, and service new spending constituencies, are only too happy to comply.

Thus, a powerful ratchet effect, born of the freedom from fiscal responsibility and the partnership between venal politicians and increasing spending constituencies, is set in motion. To this day it has not stopped.

Basically, the problem has been caused by three factors: government taxing, government overspending, and government-caused inflation (which aggravates both of the former). To take aim at these problems, the tax movement must unite under a single set of principles.

To be more specific, all who oppose bloated government and the cancers it breeds should be able to support the following principles:

- There must be a strict constitutional limit placed upon the government, preventing the confiscation of more than a set percentage of the people's wealth. Some argue that this should be less than 1 percent, others would allow a higher limit. While the ultimate objective may be no taxation, such a strict limit is a first step and must be agreed upon by a large portion of the tax movement today.
- Along with a constitutional taxing limit, there must be an amendment to force a balanced budget. This will prevent the government from continuing massive spending through deficit financing and will do much to mitigate the causes of inflation.
- Some method must be found—again, probably through a constitutional amendment—to prevent the government from causing inflation. It does this through debasing the currency, which is accomplished by printing what Milton Friedman calls "green pieces of paper" with nothing to back them. Return to a gold standard or some other objective standard of value would remedy the problem.

If tax activists everywhere could agree on such an agenda, the movement would quickly convert from "slashing and crashing about," as big-spending apologist Walter Heller puts it, to aiming a killing thrust at the heart of the issue.

To do this, a nationwide network must be formed. Unfortunately, this goal seems to get farther away by the week, as major taxpayer groups go their own way, refusing to join in a united front.

The National Taxpayers Union—with which I work—is the largest and oldest taxpayer organization in the country. Established in 1969, it is based in Washington, D.C. and has recently set up regional offices in the West, South, Midwest, and Northeast. NTU's focus so far has been on a constitutional amendment to balance the federal budget and on cuts in specific governmental appropriations. Now it is moving quickly into local, grassroots organizing.

The conservative, California-based National Tax Limitation Committee is headed by Lewis Uhler, who chaired Ronald Reagan's tax-reduction task force. Their main aim is on state constitutional amendments to limit taxes and spending. Recently they have announced an effort to draft a proposed tax-limitation amendment to the federal constitution.

Finally, Howard Jarvis of Proposition 13 fame has recently launched his National Tax Limitation Movement. His "Freedom for Taxpayers" plan would cut $100 billion from the federal budget, reduce federal taxes by $50 billion, index federal taxes, and provide for retiring the national debt.

Current proposals within the tax movement are thus diverse. With its broad base of support—conservatives, liberals, and libertarians alike—NTU is trying to gather activist taxpayers into a common front. So far, they've been unable to succeed.

The objective is a permanent network of activist taxpayers across the country. A central national organization could work as a clearinghouse of information and assistance, concentrating on battling the Washington special-interest infrastructure.

In the meantime, local groups could unite under statewide umbrella organizations in each state. Local groups, with the assistance, support, and information capability of statewide organizations and the national structure, could effect changes at their local level. Working with the state organizations, all the united groups could then work to slash back government and elect pro-taxpayer politicians on the state level.

Finally, all local groups and statewide organizations could take aim to effect the drastic needed changes on the national level. The result would be taxpayer power that would *at least* have veto power over any big-spending national candidate who dared rear his or her ugly head.

The organizational structure suggested, one will notice, is the same as with the national labor movement under the AFL-CIO. They have their locals, their state organizations, and their gigantic national structure. So why not us?

It's time the people who do the work, the ones who pay the bills, have their own taxpayers union.

—Tim Condon

"I have a feeling that the authority that is natural and basic to social organizations, neighborhoods, families and voluntary organizations is being crowded out by government. Government has taken over so many responsibilities that it has preempted the authorities of others.

Robert Nisbet,
Columbia University

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spotlight

Radar Watchdog

Do citizens have the right to employ warning systems that will alert them to police operation of clandestine electronic surveillance devices? What difference does it make if these law-enforcement devices are regarded by many experts to be less accurate than a polygraph test? Does our government have the right to forbid individuals from receiving certain radio frequencies?

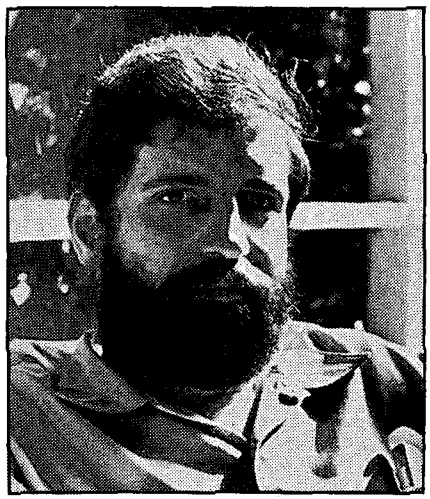
These questions evoke various aspects of the controversy surrounding the use of police radar. With over 70,000 radar units at the disposal of police across the United States, these problems have become an irritant, if not a great concern, to America's drivers. One individual embroiled in the debate is Dale T. Smith. He received his bachelor's degree in electrical engineering from Harvard in 1965 and is the inventor of a police radar monitor called Fuzzbuster, which alerts a driver to the presence of a speed trap by detecting the radio signals emitted by police radar.

Smith first developed the monitor 11 years ago after he was ticketed for speeding in what he claims was a "classic" mistake—the inability of the radar to distinguish between his car and the one actually speeding. It was not until 1973, however, that Smith founded Electrolert Inc., of Troy, Ohio, which mass-produces Fuzzbusters. Retail sales of the product will reach $100 million this year. Smith is in the center of the storm of controversy surrounding the question, Should people be allowed to operate such monitoring devices?

In Smith's view, concern over the propriety of providing people with what they see as impunity from the law is misplaced. He seems to feel that this attitude ignores the citizen's side of the "law enforcement versus citizen" relationship. Fuzzbusters legitimately protect people from the misuse of radar. Moreover, citizens have a right to know when they are under government surveillance, and in this Smith sees no difference between wire tapping and radar. The government can't constitutionally forbid you from receiving certain radio signals. "If they outlaw receiving radar frequencies today," says Smith, "they could outlaw receiving Channel 7 tomorrow."

Electrolert has battled state legislation prohibiting police radar detectors and has provided legal assistance to those who have had their detectors confiscated by police. Electrolert has spent over $500,000 in lobbying successfully against bills in 32 states and in providing legal counsel or telexing lengthy legal briefs for cases involving confiscation of Fuzzbusters. It has only been necessary for the company to hire lobbyists in two states. Usually, Electrolert simply supplies information and possibly an expert witness to the appropriate legislative committees.

An Electrolert survey of over 1,000 people in Atlanta, Oklahoma City, and Hartford "found that owners and prospective owners differed from the national sample in one significant respect." According to company president Jim Pflaum, "They feel radar is being misused or overly used, and is inaccurate. They're no more prone to speed than are non-owners." Smith has been a very vocal critic of radars—to the point of "evangelism," say some. He has even described his attempt to publicize radar's defects as "self-annihilating"—it could eliminate the very need for Fuzzbusters. Yet when about 30 percent of all radar arrests have no valid basis, either due to drawbacks in the basic machine design or human error, the present law-enforcement system has a serious defect.



Dale T. Smith

One problem with radar is the inability of police officers to narrowly define the area covered by the radar beam. A typical police radar produces a beam in the shape of a cone that extends 1,000 feet in length and expands to 225 feet in width. The vast area that the radar beam encompasses contributes to the misidentification of vehicles. Claims for the newest generation of police radar boast a recording range of 4,000 feet.

Beyond this problem, the radars are influenced by CB radio transmissions, and the computers for moving units can produce erroneous results if a police car changes speed or if a large truck is mistaken for the ground, so that the police car is taken to be moving slower than it actually is. Also, incorrectly pushing buttons on the radar will recall the number at which the unit is calibrated and not the actual speed of the vehicle. Smith has documented numerous horror stories of policemen's logs containing the "exact same speed" for most if not all of the "speeders" apprehended.

Electrolert was instrumental in a legal case decided in June 1978, in which the Virginia Supreme Court declared unconstitutional the state's law banning radar detectors. The court decision stated that one part of the statute, which reads that the state need not prove "that the device was in operation or operable" in order to obtain a conviction, was unconstitutional on the grounds that it violated an individual's right of due process. The justices also objected to the law's presumption of guilt. The removal of these presumptions resulted in the remainder of the law being unenforceable. Smith says, "There's no way a court can convict a motorist for using a Fuzzbuster. In order for a conviction to stand, a motorist would have to be caught, not only with his unit plugged in, but with the red light on the unit beeping as it went through a speed trap."

Smith's Electrolert regularly distributes well-written news releases about progress on the legislative and legal fronts concerning Fuzzbuster, as well as stories discussing police misuse of radar and their harassment of radar-detector owners. These stories include bizarre events such as police raiding the home of a physician at 4 A.M. to seize one monitor and arresting people for having in their possession a cardboard box resembling a Fuzzbuster.

Dale Smith, 35 years old, served for three years in the Air Force as a research scientist in the Air Force Research Laboratory at Wright Patterson AFB, Dayton, Ohio. From 1968 until 1972, Smith manufactured speed radar units for police agencies.

Smith's sentiments on the Fuzzbuster are best summed up in his own words: "The Fuzzbuster adds to our storehouse of personal freedoms by granting the individual the right to radar parity. Over 70,000 radar units are in use today, and training for operators of the units varies from one to one hundred hours. The Fuzzbuster allows the motorist to avoid paying for someone else's mistake."

—John R. Lott

movies

• Who'll Stop the Rain • Madame Rosa • Mahler •

• The plot-line of **WHO'LL STOP THE RAIN?** is carefully laid out, and the acting (Tuesday Weld, Richard Nolte, Michael Moriarty, Anthony Zerbe) is convincingly enough done. Yet seeing the film is hardly the kind of experience one could recommend. The opening sequence is a scene of carnage in Vietnam. The rest of the film, which takes place in the United States, is full of gratuitous brutality and sadism. The viewer is treated repeatedly to scenes of people "shooting up." Except for the Arizona scenery, there isn't much that is not unrelievedly depressing. Sometimes, as in a documentary, the viewer should watch it anyway because it is history and he should know what happened and why; this would be the case if there were a film about Soviet labor camps. But in the present instance, there is not even that justification for seeing it.

In *Sands of Iwo Jima* John Wayne dies after holding the flag aloft in victory. In this film Nolte dies in a similar pose, but without the slightest trappings of heroism. His death is the end result of his involvement with the heroin traffic out of Vietnam. Even before the end, the effect of this traffic spreads its tentacles to many people, and blights the lives of everyone involved in it. Perhaps this is the moral of the film, but if so it doesn't emerge very clearly. The film makers were more interested in sensationalism than in moral lessons.

Art should transform even the most intractable subject matter so that seeing it provides satisfaction; witnessing a work of art even with an unpleasant theme is not a masochistic act of self-torture. Films dealing with repellent themes need not themselves be repellent. A painting of a garbage dump can, through the miracle of artistry, become beautiful. This one remains just a garbage dump.

—John Hospers

• **MADAME ROSA** takes place in Paris. A survivor of a Nazi death-camp, then a Paris prostitute who fell in love with a man who left her penniless, Madame Rosa is now old and alone, and takes care of children as a source of income. The children come and go, but the Arab boy Mohammed (Momo) stays with her, for he was abandoned there by his parents in his babyhood and they have never returned. Now the old Jewish woman and the Arab child have only one another, and the woman hovers ever closer to death.

The strange alliance of Jew and Arab is the occasion for a good deal of humor in the film, as well as worldly wisdom to the effect that the ethnic difference means nothing ("The reason they've been fighting so long," she says, "is that they look so much alike"). It also makes for powerful drama. The old woman, long since abandoned by everyone, loves only the Arab child; and he in turn, also abandoned, loves no one but her, though knowing that soon he will have to go through life without her.

While feigning indifference, she is desperately afraid of losing him. She refuses to go to the hospital, not knowing what will happen to him. "I didn't sell my body for 35 years to donate it to the doctors at 65."

Though he often goes out on the street and talks with the whores at Pigalle, he always returns to her. The doctor says to him, "She is becoming senile; she will soon be like a vegetable." She overhears part of the conversation. "What's that about vegetables?" she asks him later. "He says you should eat lots of them," the boy replies.

A young doctor's wife converses with him in the park. Feeling sorry for him, she offers to take him home to meet her husband and children. Suddenly he turns away. "Oh, you have someone," he says, crestfallen. Then he would be rejected again. He will only be with someone who has nobody.

There are countless touches like this, each one brief, but always probing in psychological depth and human insight. They unify the film and etch the characters in concrete images of great poignancy. A sureness and delicacy of touch prevents the story from crossing the edge of bathos and keeps it always running powerful and true. The totally satisfying outcome could have been brought about only by a rare combination of a lean and beautiful script which never wastes a line, an economy of directorial means which never wastes a minute, and a series of remarkable performances which put us at once in tune with the characters. Simone Signoret, best known in the English-speaking world for her role in *Room at the Top*, but always a great actress, here enacts her finest role. Samy Ben Youb as the Arab child also performs with great sensitivity and restraint, reserving the full outpouring of feeling for the end.

All in all, this is the most gripping emotional drama to appear on the screen in many months. One should be prepared to laugh, but also to cry, sometimes both at the same time. One should also be prepared for a memorable experience, if one doesn't mind spending two hours in the immediate area of the emotional jugular.

—J.H.

• Films about the lives of composers have not had a distinguished history. In the 1940's *A Song to Remember*, which introduced Cornel Wilde to the screen, was a sanitized life of Chopin, attributing such ethereal motives to all its principals as to be quite beyond belief. The French film *The Life of Beethoven* was pompous and melodramatic to the point of absurdity, and redeemed only by the acting of the great Harry Baur. In the 1960's an almost equally overblown German film *The Magic Fire* was a somewhat more accurate (but highly selective and oversimplified) life of Richard Wagner, although every minor incident was elevated into a cosmic catastrophe. Probably the best of the lot was the English film *Song without End*, starring Dirk Bogarde as Franz Liszt, perhaps because the composer's life contained more of the kind of action that makes for cinematic excitement. All these films were redeemed by the renditions of marvelous music; but for this one would be more rewarded, and with much more acoustic fidelity, by staying home and playing the music on one's own hi-fi set.

And now we have **MAHLER**, completed more than three years ago but not released generally in the United States until long after its completion. It is directed by the English jack-of-all-trades Ken Russell, fresh from his "triumphs" in *The Devils* and *Tommy*. The film tells us more about Russell's mind than about Mahler's. Possessed of a vivid imagination, Russell is at his best in presenting panoplies of colors and shapes succeeding one another rapidly in time, so that one is overcome to the point of numbness by the unrelieved cascade of visual sensations. This, however, is not the quality that should predominate in a story of Gustav Mahler's life. A film biography of Mahler should attempt at least to capture the kind of tortured genius that created some of the most moving songs and soul-searing symphonies ever written. Into the vast complexity of Mahler's psyche we get very little insight in this film. The best one can say is that the unknown actor who portrays him does look like Mahler.

The backgrounds are visually stunning, as indeed are the mountains and lake regions of Austria in which Mahler lived. But why do long sections of the film deal

(Continued on p. 48.)

books

The American Police State

By David Wise
New York: Random House. 1976. 438 pp. $12.95.

Reviewed by Karl T. Pflock

First a few words about your faithful reviewer. For five years and a butt (1966-72) I was a CIA intelligence officer (*not* an "agent," as the media—and the author of the book under review here—are so fond of mistagging "Company" employees). I worked on "both sides of the house"—the Clandestine Services, which is just what the name implies, spies and such; and the Directorate of Intelligence, which is a bit more than the name implies but essentially the analytical arm of the outfit, where the bits and pieces of "raw" information are fitted together and interpreted. During my CIA years, I came to know a number of the people who show up in the pages of *The American Police State.*

I believe that intelligence gathering is a legitimate—more than that, *essential*—function of any defense agency, government or private. I believe that certain kinds of "covert action" operations are perfectly acceptable activities for defense agencies to undertake. And I believe that both sorts of work can be carried out without the perpetration of aggression. These matters need careful consideration, of course. The point here is simply to issue a forewarning.

The American Police State, subtitled "The Government against the People," is the latest effort of David Wise, author of *The Politics of Lying* and coauthor of *The Invisible Government*, the 1964 bestseller about the Central Intelligence Agency. It is a big (438 pages) and not very well written or copyedited grab bag of horror stories, facts and pseudofacts, and snide, superficial "liberal" commentary. Wise's writing is deadly dull, guaranteed to put any confirmed insomniac to sleep in jig time—although the substance of the book would likely conjure up nightmares in the bargain.

The book's main focus—if such a rambling work can be said to have a focus—is the abuses of the Nixon gang. Its main Bad Guys, apart from Nixon's personal minions, are the FBI (largely in the person of J. Edgar Hoover), the CIA, and the IRS. Although, unlike others, Wise does not claim that American police-state abuses began and ended with Nixon & Co., his consideration of such activities under Johnson, Kennedy, Truman, and Franklin Roosevelt is sketchy, to say the least. And he bends over backward in an attempt to make the abuses of power under these presidents (with the unsurprising exception of LBJ) seem insignificant when compared to the supposedly wholesale nastiness under Nixon.

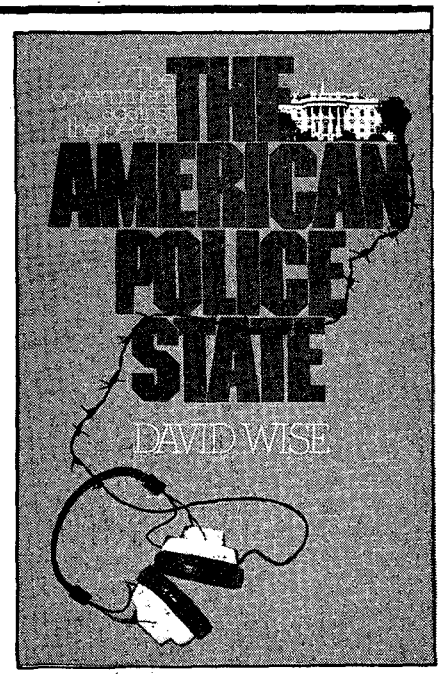
Wise also seeks to demonstrate that the political dirty tricks and related operations of Nixon's CREEP were somehow unique, the product of a peculiar megalomaniacal paranoia that infected Nixon's inner circle. Of course, anyone—including Wise—who knows anything about politics knows better. Dirty tricks are part of the political game. But Wise wants us to believe that the Nixon gang was worse than the usual run of political rotters, which is not so—except, perhaps, in terms of competence.

(An aside: If you want the low-down on police-state abuses under presidents other than Nixon and on political dirty trickery in general, pick up a copy of Victor Lasky's *It Didn't Start with Watergate.* Lasky puts everything in perspective and does so in very readable fashion.)

For all its size, *The American Police State* contains nothing new of importance. Anyone who has kept up with the Watergate scandals will find Wise's accounts of the wiretap operations, the break-ins at the office of Ellsberg's shrink and the Watergate, etc., to be slightly embellished reruns.

Similarly, the chapter on the IRS is little more than a rehash of media reports on (1) the Nixon gang's efforts to manipulate and harass its enemies through (and to shield its friends against) IRS audits and (2) the IRS's efforts to sniff out (and encourage?) dissipation and sexual "deviance" among high officials in Florida. As if no other presidential administration used the files and power of the IRS in attempts to destroy its enemies. As if the Hank Hohenstein and Karl Bray cases never happened. As if the IRS did not routinely violate the constitutional rights of thousands of Americans.

The stories of CIA hugger-mugger are more of the same: the plots to kill Castro with Mafia help, domestic spying in violation of the law, secret experiments with mind-altering drugs using unwitting human subjects, and so on. All bad and disturbing, to say the least; but unless you have been completely out of touch with the world for the past four years, you have read and heard it all before.



In connection with CIA domestic operations, Wise incorrectly claims that all such activities are illegal and improper. The CIA quite properly is prohibited from running operations against domestic targets. It is *not*, however, prohibited from carrying out activities within the United States that are directed at targets abroad —again, quite properly. Many legitimate foreign operations require domestic support outside the usual headquarters bureaucracy. Much foreign intelligence information can be most effectively collected right here at home, without in any way infringing anyone's rights. Wise and others conveniently ignore the important distinction between, for example, the illegal CIA support for Nixon's Plumbers and a CIA interview of an American scientist who has volunteered to provide information he picked up while visiting the Soviet Union.

Wise purports to tell the story of "the government against the people," yet he completely ignores the depredations of such statist monstrosities as OSHA, FDA, DEA, and FTC. Apparently only those agencies involved in "national security" work are capable of police-state abuses. Apparently only those politicians who justify their illicit activities as being in the interest of "national security" are in the wrong. Trampling on the rights of individuals is perfectly okay if it is done for

"humanitarian" reasons.

None of this is to defend the very real and dangerous abuses of power, the sins of commission and omission, the malversation, the mis- and malfeasance in high places that have come, inevitably, with the rampant growth of the American State. Nor is it to suggest that all this be shrugged off as being "just the way things are." But it is to warn you away from wasting your time and money. If you have kept up with the Watergate and related investigations, don't bother with *The American Police State.* If not, it might be worth your while—read critically and with a pot of strong coffee at hand.

Mr. Pflock is a free-lance writer and editor and a contributing editor to REASON.

Taking Rights Seriously

By Ronald Dworkin
Cambridge: Harvard University Press. 1977. 295 pp. $12.

Reviewed by Tibor R. Machan

As some of us thought, the Supreme Court's decision about Bakke walked the tightrope between considerations of justice and widely accepted social goals—that is, what outspoken members of the public consider desirable. Essentially, the court held that individuals have the right to due process but that this may be violated when it is demonstrated that so doing will further some widely desired goals.

The legal theorist who has recently provided the rationale for this line of reasoning is Prof. Ronald Dworkin, who moved from Harvard to the chair of jurisprudence at Oxford University. He set forth his views back when the DeFunis case concerning the University of Washington School of Law came into the limelight. Dworkin argued that when benign social goals are sought, it is perfectly all right to engage in racial discrimination, but otherwise governments must be gentle with individuals. In his recent book this view is driven home over and over again, and if we are to speculate about such things, it appears that the Supreme Court has been influenced by Professor Dworkin's thought.

Thirteen separate but related papers comprise this book, some from law journals, many from the *New York Review of Books*, and some previously unpublished. At the outset Dworkin explains:

> Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them.

Right away, we see that Dworkin is not espousing a conception of traditional (Lockean) natural individual rights. The latter idea serves to *identify* the collective goals we *may* (via governmental action) pursue—namely, the general welfare, which is secured when protection is given to each individual's right to life, liberty, and property (or pursuit of happiness).

Dworkin's book is not a philosophical argument for individual rights, even as he conceives of them. It is mainly an analysis of the nature of judicial proceedings. It is also an extensive criticism of legal positivism a la H. L. A. Hart. Of course, elements of a theory (one that stresses the role of political morality in law—that is, certain [Dworkinian] rights and various social goals) are introduced at several stages of the discussion. For instance, so as to achieve his task of criticism, Dworkin defends numerous crucial legal distinctions, such as between rules and principles of law.

Although the writing is lucid enough, numerous strands of the argument are inadequately developed. So we do not get a convincing case from Dworkin. For example, many legal scholars and theories are discussed and criticized with hardly a quotation from original sources. The reader must go elsewhere to check the interpretation Dworkin supplies and the subsequent criticism advanced.

Likewise, Dworkin makes various allegations about the procedures of legal education, but he introduces no concrete instance as evidence for the resulting analyses. Names such as Roscoe Pound, Lon L. Fuller, and Learned Hand are invoked and the views of their bearers are considered, but again the reader is prevented from entering the inquiry by Dworkin's failure to quote original source materials.

In the first 10 chapters of the work, one can certainly learn a good deal about Dworkin's ideas on jurisprudence, especially his assessment of the role of judges in those interesting cases that come to the attention of various high courts. On the other hand, there is hardly any interesting discussion of the less-prominent but often extremely influential processes of law that involve judges mainly as legal supervisors and leave decisions to juries.

The title of Dworkin's book, however, promises a serious concern with rights. Unfortunately, the work will prove somewhat disappointing to anyone who believes in the principle of truth in labeling. Rights, in short, are merely presupposed in many of the essays of this book. The main theme Dworkin advances is that political morality—certain principles of social and political life—must be regarded as a proper backdrop of the dynamics of law; and to those principles, judges not only should but must refer in their most important decisions.

But all of this awaits the promise of taking rights seriously—unless one means by this merely the point that, strategically, political processes should invoke rights considerations. But that advice, barring Machiavellianism, must rest on the *existence* of the individual rights Dworkin comes to discuss only at the very end of his work, and rather cursorily. It is to these final discussions that I will devote the rest of my review.

Chapter 12 of Dworkin's book is the text of a contribution to a conference on F. A. Hayek held at the University of San Francisco in January 1976 (but not so indicated where other acknowledgments are made in the book). It argues that the allegedly basic right of classical liberalism—the right to liberty—"is untenable and incoherent; there is no such thing as any general right to liberty." His argument is extraordinary. Since, according to Dworkin, "I have no political right to drive up Lexington Avenue [which is one-way southbound]," and since "if the government chooses to make Lexington Avenue one-way down town, it is a sufficient justification that this would be in the general interest, and it would be ridiculous for me to argue that for some reason it would nevertheless be wrong," then "it seems plain that there exists no general right to liberty."

This is an astounding line of reasoning for someone who set out to take rights seriously and who believes that there are moral principles that (logically) precede any positive law—indeed, may be used to justify its violation. For it is precisely in circumstances in which governments choose to take this or that action on grounds of some nebulous goal (referred to variously as the general or common or public interest) that taking rights seriously would very likely lead to a just opposition to governmental action.

All the classical liberal needs in order to prove Dworkin wrong is to show that the government has no right to run Lexington Avenue traffic. Indeed, it is doubtful whether government, plain and simple, does run traffic, since there are extremely varied "jurisdictional" arrangements involved here—some that rely on constitutional authority, others that are derived mainly from incorporation, and, of course, the hundreds and thousands throughout human history that have relied on the simple approach of conquering by brute force.

For someone who is so firmly opposed to even the most subtle form of legal posi-

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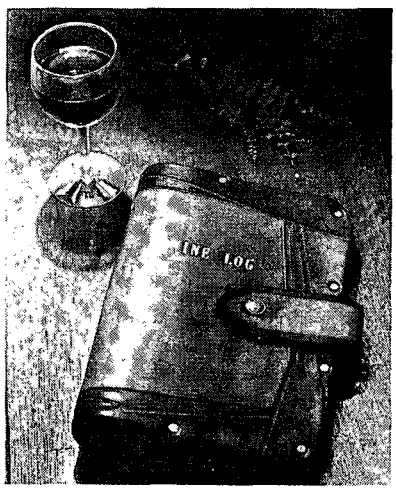

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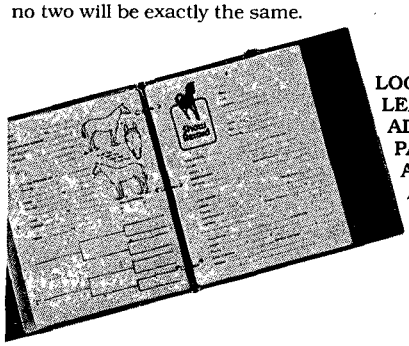

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tivism, this total faith in the appropriateness of government-managed city, state, and interstate traffic is amazing. The classical liberal need merely point out that, ideally, government would have no justification for owning and managing property not required for its proper function. Such property—broadcast frequencies, lakes, parks, roads, etc.—would be regarded as ideally or properly private, state-possessed only via the preemption of people's right to the liberty of acquiring and controlling goods and services. Dworkin at no point in his book gives even the most cursory attention to this line of argument, which can be gleaned from such (classical) liberals or libertarians as Herbert Spencer, Ludwig von Mises, F. A. Hayek, Murray N. Rothbard, Ayn Rand, and Robert Nozick! The disappointment could not be greater, given the promise of this book to take rights seriously.

Finally, Dworkin tries to defend his assumption that even in hard cases, which involve reference to his sort of rights, judges can arrive at correct answers. He contends that those who object to this are confused: neither on practical nor on theoretical grounds can the assumption be shown to be wrong. But the onus of proof is on Dworkin, so it won't do to show that skeptics are confused. He simply has not provided an adequate philosophical case in support of his underlying premise: that there exist individual rights and that the central such right is "the right to treatment as an equal."

In the end we get the following picture: Dworkin assumes the supremacy of the State and its goals, quite arbitrarily, and then argues, to mitigate the State's absolute power, that we can assume that the State owes each of us fairness as it pursues its goals. This may be a defense of administrative justice—a version of the principle of equality under the law—but not of individual rights. Dworkin, unlike theorists such as Alan Gewirth, Hillel Steiner, Eric Mack, myself, and some others, has done very little for the philosophical case in support of individual rights.

Tibor Machan is the author of Human Rights and Human Liberties.

How Revenuers Are Violating Your First Amendment Rights by Practicing Church Law

By Lucille Moran
Tavernier, Fla.: IBAM. 1977. Tape series.

Lucille Moran is an original Yankee battler from the old school. She is a doer and a mover. An old sidekick of the late Vivien Kellems, who received a good deal of publicity for her own tax resistance measures, Lucille Moran's approach has always been more radical and effective in the long run than Vivien's. Vivien Kellems captured the headlines and publicity while Lucille worked quietly in the background successfully protecting both herself and her clients from the grasping clutches of the IRS.

While other tax rebels around the country have been making news and, in some cases, landing in jail for their efforts, the unsung Lucille Moran has been consistently effective at beating the tax men at their own game. To the best of my knowledge she has never lost a single round to IRS agents, although she has been trading punches with them for 20 years or more.

Those interested in learning about the Moran modus operandi can now do so via a series of tapes available through her organization. I have reviewed the first of the series and found it to be both extremely informative and entertaining, loaded as it is with the rather bumptious, Menckenesque invective that is a hallmark of the Moran style. Lucille has developed a lexicon all her own that is especially poignant when she is discussing members of the entrenched bar, IRS agents, and other henchmen of the federal monolith.

In the course of her career as a quietly persistent and successful tax rebel, Lucille has turned herself into a scholar in constitutional law, church law, and common law, and she is amazingly adroit at using this arsenal of *legal* argument to confound the attempts of the establishment lawyers and the IRS to put her out of business. In a nutshell, Lucille has done battle with the enemy on his own turf and beaten him soundly year after year.

If I have one major criticism of this first tape, it is that Lucille spends far too much time in the beginning attacking the bumbling procedures of other tax rebels with whom she has been waging a personal vendetta. Lucille feels, however, that this opening invective is necessary since her competition has been playing into the hands of the IRS and is being outmaneuvered in various legal skirmishes. This one caveat out of the way, I can say that her opening remarks are well worth listening to in order to get to the meat of her arguments. Success is difficult to find fault with, and Lucille Moran is perhaps the most consistently successful tax rebel in the country.

—Jerome Tuccille

Systemantics

By John Gall
New York: Quadrangle. 1977. 111 pp. $6.95.

There is now a new "law" to be added to those of Murphy, Parkinson, and Peter. It shall go down in history as Gall's Rule of Thumb: "If a System Is Working, Leave It Alone. Don't Change Anything!" Mankind will undoubtedly simplify it to read: "If it works, leave it alone!" Fundamental wisdom is expressed in its purity. What could be more obvious? What could be more ignored?

Dr. Gall presents his arguments in the same geometrical style used by his mentor, Lawrence J. Peter of "Peter Principle" fame. Here again, we see axioms, theorems, and corollaries used to bring out the worst in organizational man. Some 32 axioms are given. Number 14—"Some Systems Actually Work"—contains Gall's Rule of Thumb.

If a careful reader looks beyond the obvious irony of this book, he will find an underlying libertarian viewpoint. Chapter 12 offers, as a solution to government systems, *two new freedoms:* free choice of territory (distributional freedom) and free choice of government (principle of hegemonic indeterminacy). After an explanation of the two new freedoms and how they would work in everyday life, the author concludes his argument with the effects of their adoption:

> The net result of the two new Freedoms would be to break up the Concentration of the Governed, to divide and distribute them throughout other governments, a principle which we shall call the *Comminution of Hegemony.* If practiced on a world-wide scale it could lead to revolutionary changes in the relationship of citizens to their governments, reversing the traditional polarity and making governments fearfully dependent upon the favor or even the whims of their citizenry rather than vice versa.

If there is a shortcoming, it is in the length of this book. Perhaps the author was applying the corollary of the fundamental theorem: "Systems Should Not Be Unnecessarily Multiplied." Or maybe he took to heart his Axiom No. 26: "The Larger the System, the Greater the Probability of Unexpected Failure." Either way, "It works and he left it alone"!

—Jay C. Wood

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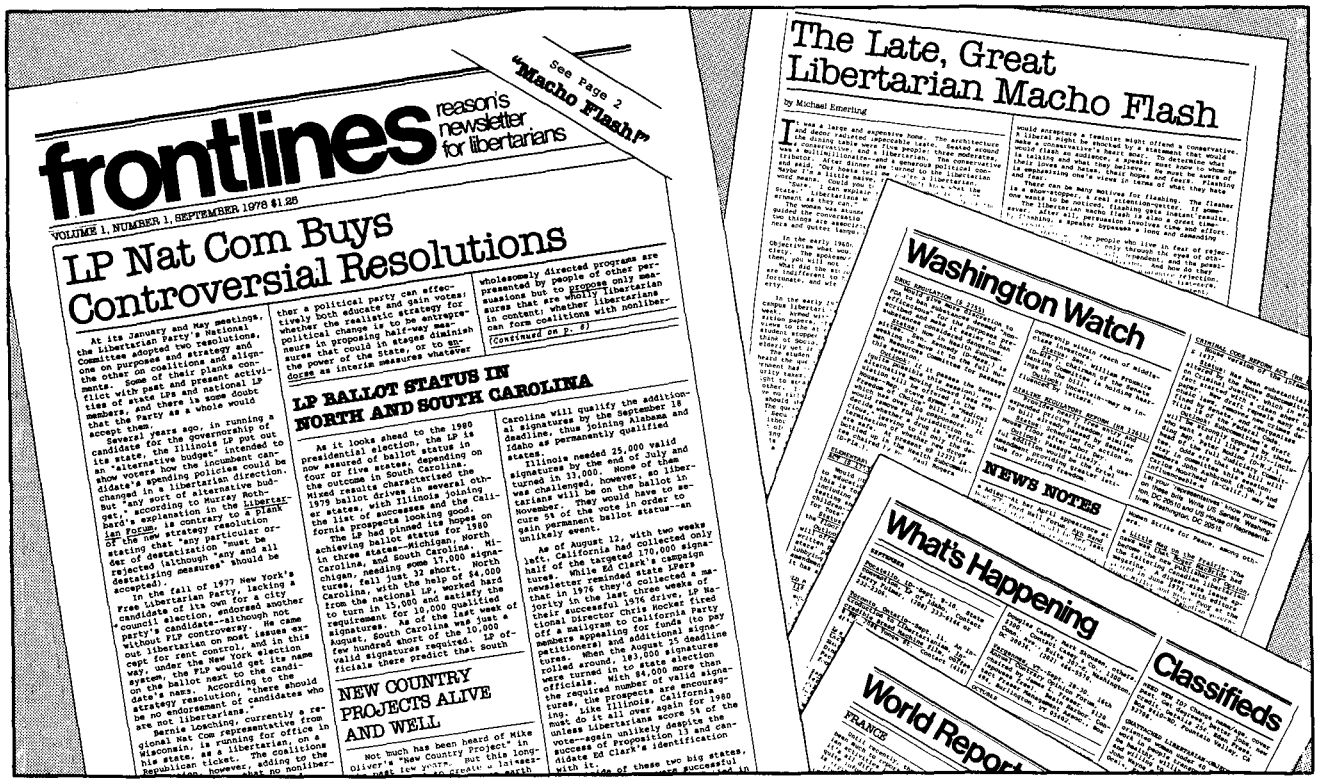

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viewpoint

(Continued from p. 39.)

could have been avoided by fiscal and monetary restraint in 1972-73. There are, however, some additional positive steps that would expand job opportunities.

Many government and trade union policies create formidable barriers to job market entry or advancement. Occupational licensing is an often unduly restrictive barrier to opportunity, whether it is local (taxicabs) or national (trucking). National and state minimum wage laws also make it difficult for young people to gain work experience and on-the-job training.

A variety of taxes and regulations create a wedge between what employers pay for labor and what employees receive in take-home pay. An employee who gets $5 an hour, after taxes, costs the employer much more. That reduces both the employer's demand for labor and the employee's willingness to accept and keep a job. Shifting from one tax to another (payroll to income, employee to employer) would have little effect. The total burden needs to be cut to give employers more incentive to employ and workers more incentive to work. ◻

letters

(Continued from p. 11.)

article purportedly to be for consumers. These are the ideas that you "win" only if you die with a term insurance policy, and that subtracting cash value from total premiums paid to get a "net cost" (this method of determining cost completely disregards time-use of money and has been discredited in the insurance industry in favor of "interest adjusted cost"). My comments are as follows:

Insurance is an expense, plain and simple. You don't "win" by dying, any more than you win by living. You put your money in the pool along with everyone else and if you live, you obviously haven't lost, but those who do die, leave their survivors some means to take care of the responsibilities the deceased left behind. The concept of insurance as a gambling contract is no way for an experienced professional to relate the idea of insurance to a consumer.

To say a person who pays in $16,776 of premium ($139.80 per month) and gets back $17,085 at the end of that period has made a return of $309 and his insurance "hasn't cost a penny," completely ignores the basic principles of money and credit. The interest adjusted method assumes that other uses would have been found for that $139.80 each month that would have yielded 4% after tax (industry standard) in money or goods and services. This assumption would make $139.80 per month worth $20,585.50 after ten years, and $51,274.91 after 20 years. That is not to say that the policy Mr. Sutton presented is not one of the less-expensive policies available. But to present the outmoded "net cost" method in an article to consumers is an abrogation of his professional responsibilities.

In general, I agree with Mr. Sutton's assessment of BTID: that, as a concept for the undisciplined investor, it can be destructive; the forced saving of cash value insurance with a cost-competitive mutual company can be rewarding. There are, however, poorly managed mutual companies and disciplined investors. We must be careful not to give consumers empty security in the form of cliches, platitudes and government regulation, but to teach them how to get the real facts for themselves.

Robert B. Loeffler
Englewood, CO

Letters from readers are welcome. Each receives editorial consideration, although only a selection can be published and none individually acknowledged.

movies

(Continued from p. 42.)

with Mahler's fantasies? Not one of them seems to me consonant with the real Mahler. One of them, in which Mahler grovels before a succession of huge Teutonic bitch-goddesses resembling Wagner's Valkyries (with Nazi insignia!) is so ridiculously out of character that one does not know whether to laugh at its absurdity or weep at the desecration of a great man. Nor does the film stand up very well as a unity; it is a series of fragments which never come together. And why are the same passages from the Fifth and Sixth Symphonies endlessly repeated, when there is such a rich store of other works by Mahler on which to draw? And why is there nothing after the Sixth Symphony? The Ninth and Tenth, along with the song-cycle *Das Lied von der Erde*, are (in my opinion and that of many others) his greatest and profoundest works. It is possible that seeing the film may stimulate some viewers who are unacquainted with Mahler's works to listen to them for themselves, but I can think of no other good reason for going to see this picture.

A film biography of a complex genius like Mahler cannot be attempted lightly. To do it justice would require the psychological insight of a Jung, the dramatic genius of a director like Fritz Lang, and the ability to create and sustain a mood and atmosphere such as only a few (first and foremost, the Danish director Carl Dreyer) have possessed. Such an enterprise is far beyond the powers of a Ken Russell, whose special abilities practically begin and end with the presentation of sensory (not necessarily sensual) orgies. The result can be described as "genius viewed from the point of view of a hack."

—J.H.

Coming Next Month:

REASON's annual Book Review Issue comes to you in December this year. James Buchanan and Alan Reynolds highlight William Simon's *A Time for Truth* and Jude Wanniski's *The Way the World Works*, two important books on current economic tribulations that are receiving a lot of attention. Robert Nozick raises some questions about Michael Walzer's *Just and Unjust Wars*, and Eric Mack explores the much-discussed recent book *The Totalitarian Temptation*, by the French writer Jean-Francois Revel, and a sturdy classic, Hilaire Belloc's *The Servile State*. John McClaughry leads you through the building and zoning maze with his examination of three new books on land-use regulation. Cheri Adrian reveals the insights of R. D. Rosen's *Psychobabble*, and James Chesher illuminates Paul Kurtz's *Exuberance*. David Norton homes in on some classic arguments in *The Passions and the Interests*, by David O. Hirschman. We get a glimpse down the road from Robert Prehoda's review of *The Study of the Future*, by Edward R. Cornish. What makes for biography in scientists' case is discussed by Morton Schagrin in his reflections on Ronald Clark's *Edison* and *Einstein*. And Lester and Deborah Hunt survey Lew Archer's world, found in the detective stories of Ross MacDonald, while economist Gene Smiley ranks the recent blossoming of free-market-oriented economics textbooks. With such variety, everyone should find plenty to sample and some things to savor.

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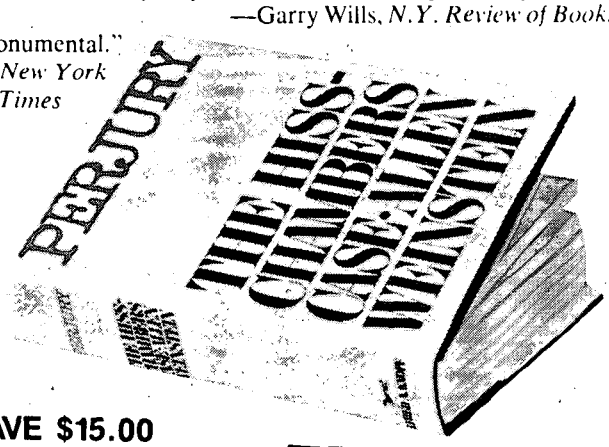

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THE CLASSIFIED AD DEADLINE FOR THE JANUARY ISSUE IS NOVEMBER 1, 1978.

THE ART OF POLITICAL PERSUASION

Marathon Weekend Workshops by MICHAEL EMERLING

- Are you tired of winning arguments and not changing anyone's mind?
- Have you groped in vain for the right words—words that would persuade?
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For information and arrangements, please contact:

MICHAEL EMERLING
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"Self-esteem comes from refusing to live lies"...

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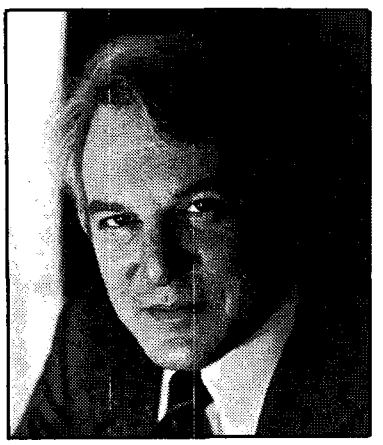

Nathaniel Branden is the author of *The Psychology of Self-Esteem, Breaking Free,* and *The Disowned Self.* He is in private practice in Los Angeles, is Executive Director of the Biocentric Institute, offers training to psychologists, psychiatrists and other mental health professionals, and conducts INTENSIVES in major cities throughout the United States.

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Reason Magazine,
Dr. Cheri Adrian

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